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HUMAN RIGHTS COMMITTEE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Fourth periodic reports of States parties due in 1993

Addendum

ECUADOR 1/

[21 February 1997]

1/ For the third periodic report submitted by the Government of Ecuador, see CCPR/C/58/Add.9; for its consideration by the Committee, see CCPR/C/SR.1116 to SR.1119 and the Official Records of the General Assembly, Forty-seventh session, Supplement No. 40 (A/47/40, paras. 219-263).

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Introduction

1. Ecuador is pleased to submit to the Human Rights Committee its fourth periodic report, in conformity with the provisions contained in article 40 of the International Covenant on Civil and Political Rights.

2. This report covers the period 1990-1996 and includes: advances made in Ecuadorian legislation in guaranteeing the implementation of all the provisions contained in the Covenant; progress achieved in the effective observance and enjoyment of the rights recognized in the Covenant; and difficulties affecting full compliance with the obligations deriving from the Covenant.

3. Ecuador has been making constant efforts to strengthen the functions of the State with a view to guaranteeing the realization of civil and political rights, and has developed a number of programmes aimed at improving the conditions necessary for the enjoyment of economic, social and cultural rights by all Ecuadorians. Its actions have particularly been directed towards raising the standard of living of low-income sectors, an objective which led to the creation of the Emergency Social Investment Fund (FISE) in 1993, with the aim of enabling the entire population to gain access to fundamental human rights and freedoms.

4. During the period covered by this report, Ecuadorian governments have been at pains to rigorously enforce the laws and other provisions guaranteeing respect for the human rights of persons subject to their jurisdiction and to eliminate procedures contrary to those enactments. Likewise, the obligations under the international and regional human rights conventions to which Ecuador is a party have been scrupulously observed.

5. As a demonstration of its adherence to its international commitments, in 1994 Ecuador invited the Inter-American Commission on Human Rights to visit the country and provided members with all necessary facilities to verify the human rights situation in Ecuador. The Commission held interviews with the highest Ecuadorian dignitaries and with representatives of broad sectors of the civil population and non-governmental organizations (NGOs) concerned with the protection of the fundamental rights of the individual. Among other activities, it visited various prison establishments. The Commission presented to the Ecuadorian Government a number of observations on the effective implementation of human rights and recommendations aimed at improving the Ecuadorian prison system. These were welcomed by the national authorities.

General trends in Ecuadorian legislation

6. The codification of the Constitution, adopted by the National Congress on 30 May 1996 and published in the Registro Oficial (official gazette) on 18 June 1996, is currently in force. This codification includes the constitutional reforms approved in 1992 and January 1996, some of which represent significant and important achievements aimed at strengthening internal human rights legislation, such as: the establishment of the Ombudsman's Office, the Judicature Council, the remedies of amparo (enforcement of constitutional rights) and habeas data, broadening the scope

of judicial review, and a better structure for the Constitutional Court. All these innovations strengthen the full realization in Ecuador of the human rights embodied in the international declarations and instruments.

7. The Ecuadorian legal system gives primacy to the Constitution, which, in article 94, recognizes that the provisions contained in treaties and other international agreements that do not run counter to the Constitution and other laws, following their promulgation, form part of the legal order of the Republic. This order is supplemented by internal laws and secondary legal provisions.

8. Ecuador is a party to all the important universal and regional human rights instruments. As in the case of the Optional Protocol to the International Covenant on Civil and Political Rights and the Inter-American Convention on Human Rights, accession involves acceptance of the jurisdiction of the bodies established by the relevant international instruments to monitor the implementation in Ecuador of the rights to which they refer.

9. The great majority of the provisions contained in the International Covenant on Civil and Political Rights are incorporated into Ecuadorian internal law.

10. Title II of the Constitution on constitutional rights, duties and guarantees, contains nine sections relating to: the rights of the individual; guarantees of rights, which include habeas corpus, the Ombudsman's Office, habeas data and amparo; the rights of the family; education and culture; social security and social development; the environment; labour; political rights; and popular consultation. The principles and rights established in the international declarations and covenants to which Ecuador is a party are fully provided for in this Title of the Constitution which, in article 19, recognizes as "the highest duty of the State ... respect, and ensuring respect, for human rights".

INFORMATION RELATING TO ARTICLES 1 TO 27 OF THE COVENANT

Article 1

Paragraph 1

11. There is complete harmony between the International Covenant on Civil and Political Rights and the Ecuadorian Constitution which, in its first article, establishes the legal and political organization of the State. It defines the State as sovereign, independent, democratic, unitary, decentralized, pluricultural and multi-ethnic, and the Government as republican, presidential, elective, representative, responsible and alternating.

12. The democratic system fully guarantees the right to self-determination of the Ecuadorian population in the free establishment of its political, economic, social and cultural condition. The will of the people is expressed in electoral processes, which allows them to freely choose the citizens who are to govern them at the national and sectional levels: the President and Vice-President of the Republic, the 82 deputies who make up the single-chamber

Congress, mayors, prefects, provincial and municipal councillors. Voting is universal, equal, direct, secret and obligatory for those able to read and write. This right is exercised by Ecuadorian men and women who have reached 18 years of age and who enjoy the rights of citizenship, and is optional for illiterate persons and persons who have reached the age of 65.

Paragraph 2

13. Ecuador considers as an inalienable part of its sovereignty the right to dispose freely of its natural wealth and resources. According to the Constitution (article 60), the organization and functioning of the economy must be in keeping with the "principles of efficiency and social justice, in order to ensure a dignified existence for all inhabitants, at the same time allowing them equal rights and opportunities with regard to the means of production and consumption ... The action of the State shall have as its objective ensuring the equitable distribution of investment and wealth in the community".

14. Article 61 of the Constitution establishes as areas of economic exploitation reserved to the State: "non-renewable natural resources and, in general, products of the subsoil, and all minerals and substances with characteristics different from the soil itself".

15. Ecuador's development is based on the market-economy system and the right to own property is set out in article 63 of the Constitution, which stipulates: "Property, in any of its forms, constitutes a right which the State recognizes and guarantees for the organization of its economy, for as long as it performs its social function". In addition, article 66 reads: "The State guarantees ownership of land under production and encourages agricultural enterprise. The public sector shall create and maintain the necessary infrastructure for the development of agricultural production."

Paragraph 3

16. Ecuador considers that the right to free determination of peoples constitutes a solid foundation for unreserved respect for human rights and other individual guarantees. This conviction is stipulated in article 40 of the Constitution, which reads: "The Ecuadorian State condemns any form of colonialism or neocolonialism or of racial discrimination or segregation. It recognizes the right of peoples to free themselves from these oppressive systems."

17. Consequently, one of the guiding principles of Ecuador's foreign policy has traditionally been the right of peoples to self-determination and the repudiation of all forms of colonialism and discrimination. In international forums Ecuador has thus supported all initiatives and actions aimed at ensuring recognition of this right.

18. In connection with the situation in the Middle East, Ecuador, which was one of the first countries to recognize the State of Israel, considers that a just solution should grant the same right to the Palestinian people through a peaceful process of negotiations between the parties.

19. In recent years debate on Taiwan's entry into the United Nations has increased again. Ecuador defends the territorial integrity and sovereignty of States, and therefore does not recognize factions in a country which wish to break away from that country, unless negotiations are carried out and enable the parties, by mutual agreement, to decide on the dissolution of the State, as was the case with the former Czechoslovakia.

20. With regard to the crisis in the former Yugoslavia, Ecuador systematically pronounced itself in favour of a peaceful settlement of the differences in that region. It therefore supported the peace accords signed in Dayton (Ohio) in November 1995, which recognized the territorial division of the republics which made up the former Yugoslavia, including the legal existence of Bosnia and Herzegovina as a single State.

Article 2

Paragraphs 1 and 2

21. The Ecuadorian Constitution categorically stipulates, in article 20, that the Ecuadorian State "guarantees to all individuals, male and female, who are subject to its jurisdiction, free and effective exercise and enjoyment of the civil, political, economic, social and cultural rights enunciated in the declarations, covenants, agreements and other international instruments in force". This provision was adopted as a result of the constitutional reforms promulgated in January 1996 and significantly extends the scope of a previous provision on this issue, thus demonstrating Ecuador's determination to respect unreservedly the human rights of its entire population, with the limitations applying to foreigners, particularly with regard to the exercise of political rights.

22. The principle of equality before the law is explicitly recognized in the rights of the individual and has been provided for in Ecuadorian constitutional law ever since the enactment of its first Constitution.

23. Article 22 of the Constitution, relating to constitutional guarantees, provides that: "Without prejudice to other rights necessary for the full moral and material development deriving from the nature of the individual, the State guarantees: ... (6) **Equality before the law: any discrimination based on race, colour, sex, religion, political or any other affiliation, social origin, economic situation or birth is prohibited".**

24. The Penal Code, in its chapter on "Offences relating to racial discrimination", expressly characterizes as an offence incitement to or execution of acts which may encourage racial discrimination and establishes the corresponding penalties for anyone infringing this provision.

25. In addition to these enactments, the provisions contained in the Code of Civil Procedure reaffirm the principles of equality before the law of all persons and effective remedies before the courts.

26. Freedom of worship and conscience has been provided for in Ecuadorian constitutions ever since the first Constitution enacted in 1906 and has been unreservedly respected.

27. The headquarters of the Latin American Association for Human Rights (ALDHU), which periodically publishes and widely distributes the "Manual for popular human rights education", is based in Ecuador and works in collaboration with the competent authorities of the National Government. There are also numerous non-governmental human rights organizations which contribute to knowledge of fundamental human rights and freedoms and report cases of their non-observance.

Paragraph 3 - Rights and judicial remedies

28. In order to ensure the enjoyment of the rights recognized in the agreements, covenants and conventions to which Ecuador is a party, any inhabitant of the country, in situations where they consider that their rights have been affected, can lodge a complaint before the internal bodies or courts - the judiciary, municipalities, Congress. In cases in which they consider **internal** legislation has not been properly complied with, they can approach the competent international body, such as the Human Rights Committee set up under the International Covenant on Civil and Political Rights, the Inter-American Commission and Court of Human Rights established by the Pact of San José, and the Committee on the Elimination of Racial Discrimination.

29. Fulfilment of the provision contained in article 2, paragraph 3, of the Covenant is guaranteed in the Constitution, which demands the application of criminal law and civil law for damages and establishes that criminal law shall ensure due proportionality between offences and penalties.

30. In the Penal Code (Book II, Title II), Ecuador characterizes as offences against constitutional freedoms any acts which violate the right to freedom of suffrage, freedom of conscience and thought, the freedom of the individual, the inviolability of the home and correspondence, the right to work, and freedom of association and petition, and acts involving an obligation to testify against oneself or one's relatives in matters that may involve criminal responsibility, or the imposition of punishment that is injurious to a prisoner's human dignity.

31. The Code of Criminal Procedure establishes the binding nature of judicial sentences, making authorities or private individuals who try to hamper their enforcement liable to punishment.

32. Congress has an Ad Hoc Commission on Human Rights, which is composed of legislators representing all political trends and whose basic aims are the following: analysing and verifying complaints of human rights violations; determining responsibility in cases of human rights violations; instituting administrative and criminal proceedings against any officials who conceal, order or commit acts in violation of human rights; encouraging human rights teaching and dissemination programmes; analysing the prison situation and improving it by rehabilitating prisoners; proposing constitutional and legal reforms to strengthen the fundamental rights of citizens; following up complaints about human rights violations made against Ecuador in international bodies; and promoting the defence of human rights in inter-parliamentary and Latin American bodies, calling for declarations by Congress in the most serious cases, as appropriate.

33. Following complaints about police participation in the disappearance of the two Restrepo brothers in 1988, human rights organizations and the Ecuadorian Government decided to form the Ad Hoc Commission for Truth and Justice in order to preserve the freedoms and guarantees of citizens established in the Constitution and in international agreements.

34. Through this Commission, set up in September 1996, the Government intends: to gather complaints on human rights violations, especially on disappearances, torture and other acts of violence against the person; to establish the facts; to punish those responsible; and to provide redress for the damage caused.

35. The Commission for Truth and Justice counts among its objectives the preservation of the freedoms and guarantees of citizens established by the Constitution and by international agreements. To this end, the Government has committed the National Police to provide the Commission with the broadest possible collaboration in the performance of its tasks, and to unreservedly ensure that all its proceedings conform with constitutional and international provisions on respect for the life, physical integrity and dignity of persons undergoing investigation or detention.

36. Given the innovative characteristics of this Commission for the first time the Government and civil society are able to work together to investigate violations of the right to life, torture, disappearances and murders. The task which awaits the Commission is extensive and intensive, in that it will have to look through archives and collect testimony for all the 17 years which have passed since democracy was restored in our country. During its first week of work, the Commission received about 200 complaints, which are currently being investigated by technical working groups made up of local human rights bodies, the Church and universities. In order to guarantee its independence from the Government in cases which it considers appropriate, the Commission seeks minimum dependency on State funds.

37. The constitutional reforms of 1996 incorporated new mechanisms and procedures to guarantee constitutional rights and the full application of human rights. Changes were introduced into the structure of the court charged with matters pertaining to observance of the Constitution, and ensured fuller participation of social groups; and the Office of the Ombudsman and the remedies of amparo and habeas data were created.

38. The Constitution, in article 175, establishes the Constitutional Court as an autonomous body whose primary function is to ensure observance of the Constitution and of the rights it proclaims. The three branches of the State - legislative, executive and judicial - each designate three members, giving a total of nine who make up the Court.

39. The Constitutional Court is competent to judge and decide motions lodged on the unconstitutionality of decree-laws, decrees and ordinances, and administrative acts by any public authority. A declaration of unconstitutionality entails repeal of the act. In addition the Court can decide on unconstitutionality objections raised by the President of the

Republic against bills approved by Congress, settle conflicts on competence or responsibilities assigned by the Constitution, and intervene in the protection of the fundamental rights of the individual.

40. One of the primary functions of the Constitutional Court is to hear decisions which deny the remedies guaranteed in Section II "Guarantees of rights", cases where it is mandatory to consult the Court, and appeals provided for in the remedy of amparo. The decisions of the Court are final and unappealable.

41. Under article 29 of the Constitution, the Ombudsman is required to initiate or sponsor habeas corpus and amparo actions, and carry out the other functions assigned to him by law.

42. Congress has passed the Ombudsman's Office Organization Act, which was published in the Registro Oficial (No. 7) on 20 February 1997. Among the functions of the Ombudsman are: initiating unconstitutionality motions in the Constitutional Court, in accordance with the provisions of article 177 (e) of the Constitution, and providing information under paragraph (f) of the same article (these functions are closely linked to those described in paragraphs 39 and 40 above); intervening as a mediator in disputes with the public authorities brought before him by legal persons and grass-roots organizations; taking part in matters relating to protection of the environment and the cultural heritage; promoting human rights training; visiting rehabilitation centres to verify respect for human rights; presenting draft legislation as representative of popular initiatives; expressing public censure of persons responsible for violations of human rights; on cases submitted for his consideration, publicly expressing opinions which will constitute doctrine for the defence of human rights; providing information for the purposes of the signature and ratification of international covenants, conventions or declarations relating to human rights and ensuring their effective execution; protecting and defending, of his own motion or on the application of a party, human rights violated in the case of Ecuadorians living abroad, using international diplomatic or judicial channels; and reporting annually to Congress on the human rights situation in Ecuador and the work of the Ombudsman's Office. The Ombudsman's Office Organization Act is appended ror further information.

43. The right of amparo is provided for in the current article 31 of the Constitution, under which "any person may apply to the organs of the judiciary designated by law and request the adoption of urgent measures to halt, prevent the commission of, or immediately remedy the consequences of, an unlawful act by a public authority violating any of the constitutional rights and which may cause imminent, serious and irreparable harm. To this end the judge who is to hear the appeal may not be restrained from doing so and the hearing shall be held even on official holidays". The judge's action shall be immediate and, if he finds the application for amparo to be well founded, "he shall order the suspension of any current or imminent action that may result in a violation of the constitutional right".

44. To date the Constitutional Court has exercised this right on few occasions. In order that it be implemented by the judiciary, Congress is giving priority to the enactment of the corresponding law.

45. The remedy of habeas data, provided for in article 30 of the Constitution, recognizes the right of any person to have access to documents, databases and reports about himself or about his possessions, held by public or private bodies, and to know what use is being made of these data and the purpose of such use. Equally "he may request the competent judge or official to update, rectify, eliminate or cancel these data if they are incorrect or unlawfully affect his rights". At the moment no statistics exist on the use of this remedy and the respective bill is being studied to ensure its correct implementation.

46. Equality of all persons before the courts and tribunals will be discussed in detail in connection with article 14 of the Covenant.

Article 3

47. The Constitution, in article 22 (6), "declares the legal equality of the sexes. Women have the same rights and opportunities as men in all spheres of life, especially the economic, labour, civil, political, social and cultural spheres. The State shall adopt the necessary measures to give effect to this right and to eliminate any discrimination".

48. Ecuador has incorporated in its National Development Plan a set of gender-perspective strategies, policies and goals in each of the critical areas covered in the Platform for Action approved at the Fourth World Conference on Women in Beijing in September 1995. These are aimed at: alleviating poverty; eliminating violence against women; increasing participation of women in the benefits of development, particularly with regard to education and training, health, employment and the environment; and increasing women's participation in politics and in decision-making at all levels. Appended herewith is the document "Ecuador's commitments" for the advancement of Ecuadorian women, which is scheduled for full implementation by the year 2000.

49. In addition, the National Directorate for Women - a department of the Ministry of Social Welfare - has designed a set of public policies intended to achieve equal opportunities; they have normative status where State institutions are concerned and serve as guidelines for the non-governmental sector. They are set out in the "Equal opportunities plan, 1996-2000", which is appended to this report.

50. The August 1989 reforms of the Civil Code, referred to in the third periodic report, are still in force. They concern, inter alia, marriage, the marital community, de facto unions, the family and paternal authority, and abolish any form of discrimination against women, such as the legal authority, known as "marital authority", which men used to exercise within marriage and the restrictions on married women testifying in court.

51. Article 51 of the Constitution stipulates that male and female Ecuadorian citizens are equally entitled to take part in elections and to be elected. Article 52 makes no distinction prejudicial to the voting rights of women, as voting is compulsory for both men and women over the age of 18.

52. Female suffrage has been established since the adoption of the 1929 Constitution. Mandatory voting for women is viewed as a victory, achieved with the adoption of the 1967 Constitution. Previously, it was optional for women to vote, which was why more women than men abstained.

53. The Political Parties Act, promulgated in December 1976, stipulates that membership of a party may not be subject to discriminatory conditions.

54. However, as regards participation in politics, although women's involvement has gradually increased, they are still under-represented. Women account for only 13.4 per cent of party membership at the provincial level and 8.4 per cent at the national level.

55. At present, 4 out of 82 deputies in the National Congress are women, there are 2 women Ministers of State in the Cabinet and for the first time, it should be emphasized, the current Vice-President of Ecuador and the President of the Supreme Court are women. In recent years, there has been an increase in the number of female Under-Secretaries or Vice-Ministers and Governors (which are the highest executive posts in the provinces, the districts into which the country is divided for administrative purposes), heads of monitoring bodies, ambassadors, judges, municipal councillors, etc. In some public institutions there are more female employees than male.

56. A growing number of women are active in the private sector and in virtually all the professions, although the number of women in high-level positions is quite small.

57. The Labour Code Reform Act (No. 133), which was published in the Registro Oficial (No. 817) of 21 November 1991, has introduced a number of positive changes in respect of working women. One is contained in article 150, under which, if a woman or male minor suffers an accident or incapacity as a consequence of doing work from which they are barred, the employer is required to pay them industrial accident compensation of not less than twice the normal amount. Article 153 extends maternity leave from 8 to 12 weeks; article 154 stipulates that a contract of employment may not be terminated on grounds of the employee's pregnancy; article 155 provides that if, as a result of pregnancy or childbirth, the employee is incapacitated for work by illness for up to a year, her contract may not be terminated on those grounds. Article 171 states that a pregnant woman may not be summarily dismissed or given notice after she has become pregnant; if such a case occurs, the Labour Inspector will order the employer to pay compensation equivalent to one year's remuneration, without prejudice to any other rights to which she may be entitled. The Labour Code stipulates that in firms employing 35 or more female workers, the employer is required to provide a day-care service and authorizes firms unable to comply with this requirement to associate in order to do so.

58. Equality of remuneration is laid down in article 78 of the Labour Code, which stipulates that there shall be "equal pay for equal work, without distinction as to sex, race, nationality or religion". Although this provision is as a rule observed in the public sector, this is not the case in

the private sector, as women receive lower wages, and in some cases firms prefer to hire men because women have to cease work temporarily when taking maternity leave.

59. Where female employment is concerned, a number of articles of the Penal Code are not consistent with the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, adopted by the United Nations General Assembly in December 1949 and ratified by Ecuador on 3 April 1979. This is one of the reasons why the judiciary has examined reforms of the Penal Code in order to bring Ecuadorian legislation into line with international standards. The articles concerned are the following:

(a) Penal Code, article 525: "Anyone who takes women into his home in order that they may abuse their bodies there shall be liable to three to five years' imprisonment, unless he is the manager of a brothel established in conformity with the regulations issued by the authorities for such establishments."

(b) Article 526: "Anyone who habitually lives off immoral earnings, with the exception specified above, shall be liable to two to five years imprisonment and two to five years' probation. The occupation shall be deemed to be habitual if it is proved by two or more acts committed on different occasions and by different persons. If the act is committed by the father or mother of the persons prostituting themselves, the offender shall also be deprived of his or her rights and prerogatives under the Civil Code in respect of his or her child's person or property."

60. Where education is concerned, the provisions establishing equality are to be found in article 40 of the Constitution: "All inhabitants shall have access to education, without any form of discrimination". This provision is also incorporated in the Education Act, article 26 of the Juvenile Code and the regulations for the protection of minors. Unfortunately, observance of these provisions is limited on account of the inadequate allocation made in the State budget to ensure access to primary education by the whole population, particularly in rural areas, and because of the poverty affecting large sectors of the country.

61. Article 40 of the Constitution also stipulates that "Education shall be based on principles of nationhood, democracy and social justice, peace and the defence of human rights, and shall be open to all currents of universal thought ... Freedom of education and academic freedom shall be guaranteed. In the educational activities carried out in areas with a predominantly indigenous population, Quichua or the language of the respective culture shall be used as the principal language of instruction and Spanish as the language of intercultural relations".

62. Article 43 of the Constitution requires the State to commit itself to fostering "training for peasant women and women in marginal sectors".

63. The Directorate for Rural Women (Ministry of Agriculture and Stockbreeding) has introduced a number of programmes to train peasant women and provide them with the necessary assistance in undertaking community and

self-management projects and thereby improve their standard of living. Many of these programmes are carried out with international cooperation and the support of a number of NGOs, and have proved successful. Some export-oriented programmes have enjoyed great international success.

64. Ecuadorian Governments have conducted intensive nationwide campaigns to reduce illiteracy; these have included radio programmes produced by the Latin American Association for Education by Radio, whose headquarters are in Quito. The programmes, some of which are in Quichua, cover a wide area, particularly the rural highland area and the eastern region, where the population is mainly indigenous.

65. The statistics below show that in practice there are indeed differences in terms of formal education for boys and girls; although they are neither pronounced nor a cause of serious problems, the State has an obligation to initiate such activities and measures as are required to eliminate the differences.

Average literacy rate of men and women

A. Average number of years of schooling by area and sex: 1990 and 1994
(Population aged 24 or over)

Area	1990			1994		
	Women	Men	Average	Women	Men	Average
Urban	8.7	8.9	8.3	8.3	8.9	8.6
Rural	4.7	5.2	3.8	3.8	4.7	4.3
Average	7.2	7.4	6.5	6.5	6.9	6.8

Sources: 1990 population and housing census, National Institute of Statistics and Censuses (INEC); World Bank, 1994 Survey of Living Conditions.

66. The actual state of education in Ecuador is apparent from the following tables:

B. Average number of years of schooling by area and sex: 1990 and 1994
(Population aged 24 or over)

Area	1990			1994		
	Women	Men	Average	Women	Men	Average
Urban	8.7	8.9	8.3	8.3	8.9	8.6
Rural	4.7	5.2	3.8	3.8	4.7	4.3
Average	7.2	7.4	6.5	6.5	6.9	6.8

C. Percentage of working population aged 24 or over with higher education, by area and sex: 1990 and 1994

Area	1990			1994		
	Women	Men	Average	Women	Men	Average
Urban	30.6	23.3	25.6	27.0	24.1	25.3
Rural	9.5	4.7	5.6	3.3	3.5	3.4
Average	25.8	16.6	19.1	17.5	14.6	15.7

D. Percentage of the population enrolled in school failing to attend school for two or more weeks, by area, sex and age group: 1994

Area	Females			Males			Average
	6-11	12-14	15-17	6-11	12-14	15-17	
Urban	0.9	2.1	3.4	1.0	2.4	4.2	1.9
Rural	3.7	8.4	8.6	7.6	5.2	5.5	6.2
Average	2.2	4.3	4.8	4.4	3.6	4.6	3.7

67. Article 41 of the Constitution, concerning universities and technical colleges, requires the State to ensure equal opportunity of access to these establishments: "No one may be denied access to them on economic grounds".

68. According to recent data provided by the National Council of Universities and Technical Colleges (CONUEP), the percentage of female students enrolled in these establishments is 53.29 and that of male students 46.71.* This represents a major step forward for Ecuadorian women and will undoubtedly improve their situation.

69. In Ecuador, women's rights are the theme of vigorous dialogues, debates and activities. Numerous organizations, within and outside the public sector, are endeavouring to develop society's awareness of women's rights and to promote effective equality for them, and significant progress has been made in the spheres of education, health and employment. Other key issues in the nationwide debate have been women's participation in politics, violence against women, and greater participation by women as the agents and beneficiaries of development.

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* Data for 1995 concerning all the universities and technical colleges recognized by CONUEP.

70. As a result of this intensive campaign, which has been conducted by numerous women's groups, it was possible rapidly to adopt the Act Prohibiting Violence against Women and the Family and to increase the number of specialized police stations for women (Comisarias de la Mujer), of which there are currently six in various provinces. Congress is currently considering the Protection for Working Women Bill and the Equal Opportunities Bill, which are intended to benefit women. It should also be stressed that there has been a positive change, widely appreciated by the public, in the attitude of the Ecuadorian Government towards the situation of women, which has enhanced the protection and defence of their rights.

71. The Act Prohibiting Violence against Women and the Family, which was passed on 29 November 1995 and published in the Registro Oficial (No. 839) of 11 December 1995 when it came into force, is designed to ensure that the principle of equality in private life is effectively observed: its purpose is to safeguard the physical and mental integrity of women and the sexual freedom of women and members of their family by preventing and punishing violence within the family and other violations of their rights and those of their family. "The provisions set forth in this Act shall guide the relevant policies of the State and the community".

72. Article 7 sets forth the basic principles governing the Act, requiring measures taken under it to be "free, readily available, rapid and confidential. Except in proceedings before the criminal courts and magistrates, the services of a lawyer shall not be required unless decided otherwise by the authorities. In such cases, a counsel shall be appointed by the court".

73. Article 22 of the Act lays down the penalties applicable to offenders: "In passing judgement, the judge shall, if he finds the defendant guilty, order him to pay damages equivalent to 1 to 15 times the minimum wage according to the seriousness of the results, which shall constitute grounds for divorce. If the violence has caused the loss or destruction of property, the offender shall be required to replace it in cash or in kind. This decision shall constitute an enforceable instrument. If the person sentenced is destitute, the financial penalty shall be replaced by community work, for a minimum of one to two months and at times that do not interfere with his paid employment, on schemes operated by the Ministry of Social Welfare".

74. The mechanisms for ensuring compliance are set forth in article 24 of the Act, which reads as follows:

> "The Ministry of Social Welfare, acting through the National Directorate for Women, shall have the following responsibilities:
>
> 1. Determining policies, coordinating activities, and drawing up plans and programmes to prevent and eradicate violence against women and the family;
>
> 2. Setting up temporary shelters, homes and refuges, and also centres for the re-education or rehabilitation of offenders and members of the family concerned. These establishments may be set up as an integral part of the Directorate, through agreements or contracts with, or with

funding from, international, State, sectional, religious, educational or non-governmental organizations, or by any other duly qualified natural or legal person. They shall employ specialized professional and technical staff.

3. Programming, organizing and conducting educational activities for parents and families, with the aim of eradicating violence;

4. Encouraging and coordinating training programmes with a gender perspective for involved staff of the judiciary and the Ministry of the Interior;

5. Establishing a national data bank on violence against women and the family, and keeping qualitative data on the problem;

6. In order to provide a basis for rehabilitation policies, they shall be provided with ad hoc funding either by the central Government or by any other source."

75. The following statistical tables show the situation as regards violence against women in Ecuador.

Sexual violence: follow-up to complaints, Quito, 1989-1992

Response by the legal system	Follow-up	Per cent
Complaints	1 548	100.00
Arrest warrants issued	770	49.74
Arrests	280	18.08
Convictions	16	1.03
Acquittals	11	0.71
Revocations	28	1.80
Bail	15	0.96
Released for reasons unknown	16	1.03

Source: Courts of first instance, Pre-trial Detention Centre (CDP), Garcia Moreno prison and No. 2 Men's Prison, Quito, 1993.

Sexual violence: details of grounds for release, Quito, 1989-1992

Grounds for release	Rape	Attempted rape	Abduction and rape	Indecent assault	Sexual abuse	Total
Revocation	22	1			5	28
Release on bail	5		1	1	8	15
Stay of proceedings	3			1		4
Dismissal of proceedings	8			1	1	10
Released for reasons unknown	13	3				16
Total	51	4	1	3	14	73

Source: Case files in Garcia Moreno prison and No. 2 prison, Quito, 1992.

Details of pre-trial arrests, Quito, 1989-1992

Offence	Admitted to CDP	Transferred to Garcia Moreno prison or No. 2 prison	Released
Rape	192	144	46
Attempted rape	58	28	14
Abduction	24	18	6
Sexual abuse	5	3	2
Indecent assault	1	19	0
Total	280	212	68

Source: CDP, Quito, 1993.

Details of pre-trial arrests, Quito, 1989-1992

Offence	Admitted to CDP	Transferred to García Moreno prison or No. 2 prison	Released
Rape	168	131	37
Attempted rape	58	28	14
Suspected rape	22	11	9
Abduction and rape	2	2	0
Total	250 (100%)	172 (68.8%)	60 (24%)

One third of detainees are released within 48 hours.

Source: CDP, Quito, 1993.

Sexual violence: register of detainees, García Moreno prison and No. 2 prison, Quito, 1989-1992

Offence	Admissions		Released	
	Subtotal: rape	Total: sexual violence	Subtotal: rape	Total: sexual violence
Rape	164		76	
Rape, assault and robbery	15		5	
Attempted rape	9		6	
Rape followed by death	7		2	
	195		89	
Indecent assault		18		13
Sexual abuse		18		16
Total	195	232	76	119

The figures include 20 detainees transferred from other prisons in Ecuador.

Source: CDP, Quito, 1993.

Sexual violence: register of detainees, Quito, 1989-1992

Offence	Number	Per cent
Rape	147	74
Abduction and rape	16	1
Assault, robbery and rape	15	5
Rape followed by death*	7	2
Attempted rape	9	6
Rape and bodily injury	1	1
Total	195	89

* The figures include five homicides involving rape (García Moreno prison).

Source: García Moreno prison and No. 2 prison, Quito, 1993.

Sexual violence: register of detainees, El Litoral prison, Guayaquil, 1989-1992

Offence	Number	Per cent
Rape	53	86.89
Indecent assault	7	11.48
Sexual abuse	1	1.64
Total	61	

Source: El Litoral prison, data collection, Guayaquil 1993.

Sexual violence and sentences, García Moreno prison and No. 2 prison, Quito, 1989-1992

Prison population (232 detainees)	Convictions		Acquittals	
	Subtotal: rape	Total: sexual violence	Subtotal: rape	Total: sexual violence
Rape	8		5	
Rape followed by death	1		2	
Abduction and rape	2		0	
		11		7
Indecent assault		4		3
Sexual abuse		1		1
Total	11	16	7	11

Source: García Moreno prison and No. 2 prison, Quito, 1993.

Sexual violence and sentences, El Litoral prison, Guayaquil, 1989-1992

Sexual offence	Convictions	Acquittals	Total sentences
Indecent assault	4	0	4
Rape	37	1	38
Total	41	1	42

Source: El Litoral prison, data collection, Guayaquil, 1993.

Sexual violence: Quito-Guayaquil. Complaints per year

	1989	1990	1991	1992	Total	Per cent
Quito	526	321	380	321	1 548	44.00
Guayaquil	640	546	370	367	1 923	55.40
Total	1 166	867	750	688	3 471	100.00

Sexual violence: Quito and Guayaquil. Sexual offences per year

	1989	1990	1991	1992
Rape	502	341	314	377
Abduction and rape	336	279	207	158
Indecent assault	263	165	143	107
Sexual abuse	66	80	86	53
Subtotal	1 167	865	750	695
Total number of sexual offences in four years	3 477			

Source: Survey, courts of investigation, Quito and Guayaquil, 1993*.

* Guadalupe León, Del encubrimiento a la impunidad. Diagnóstico sobre violencia de género. Quito, 1995, pp. 245 and 246.

Article 4

76. As the Committee is aware, the Constitution determines those situations in which a national emergency may be declared. In conformity with the January 1996 codification of the constitutional reforms, article 103 (ñ) establishes as responsibilities and duties of the President of the Republic declaring a state of national emergency and assuming all or some of the following powers, in the event of imminent external aggression, international war or serious domestic upheaval or disaster, and notifying the National Congress, if it is in session, or the Constitutional Court:

(a) To decree the advance collection of taxes of various kinds;

(b) In the event of international conflict, imminent external aggression or domestic catastrophe, to allocate for the defence of the State or mitigation of the disaster, government funds intended for other purposes, with the exception of those assigned to health and welfare;

(c) To transfer the seat of Government to any part of the national territory;

(d) To temporarily close or requisition ports;

(e) To introduce prior censorship of the mass media;

(f) To suspend or restrict, if necessary, one or more of the rights set forth in article 22, paragraphs 5, 8-10, 14 and 19 (h), of the Constitution, but in no circumstances may he order exile or banishment to a place outside a provincial capital or to a region other than that of the person concerned;

(g) To declare a security zone in all or part of the national territory, subject to the law.

77. This article is in no way discriminatory in its implementation and is in conformity with the provisions contained in articles 6, 7, 11, 15, 16 and 18 of the Covenant. In addition, it makes it incumbent upon the Head of State to lift the state of emergency when the grounds for it have ceased, and authorizes Congress or, if it is in recess, the Constitutional Court to revoke the declaration if circumstances so warrant.

78. In recent years, Ecuador has experienced situations of national emergency due to electricity shortages and to the war with Peru at the beginning of 1995. These were brought to the attention of the Inter-American Commission on Human Rights, in conformity with article 27 of the Pact of San José, Costa Rica. The latter declaration of emergency was revoked in October 1995, by a decision of the Court of Constitutional Guarantees, in exercise of the authority vested in it by the Constitution, during a congressional recess. The Court based its decision on the view that the grounds that had led to the declaration no longer existed and the need to safeguard human rights, which is the responsibility of this Court*.

Article 5

79. Pursuant to article 2 of the Constitution, the State's primary function is "**to ensure the observance of fundamental human rights** and to promote the economic, social and cultural advancement of the country's inhabitants". The purpose of this provision is to provide ample assurance that no situations such as those referred to in article 5 of the International Covenant on Civil and Political Rights may occur.

Article 6

80. As has been stated in previous reports, and we reiterate the point in this report, the Ecuadorian legal system affords special protection of the fundamental right to life. Ecuador abolished the death penalty in 1897.

81. Article 22 of the Constitution reads as follows: "Without prejudice to such other rights as are necessary for the full moral and material development of the individual, the State guarantees individuals the following: (1) **the inviolability of life and integrity of the person**. There shall be no death penalty. Torture and any form of inhuman or degrading treatment shall be prohibited. (2) The right to live in an unpolluted environment. It is the duty of the State to ensure that this right is not jeopardized and to promote the conservation of nature. The law shall establish restrictions on the exercise of certain rights and freedoms in order to protect the environment".

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* Declaration made by Executive Decree No. 2487 of 27 January 1995. Decision approved by the Court of Constitutional Guarantees, 24 October 1995. Source: Constitutional Court, Quito, November 1996 (archives).

82. In August 1996, the Ministry of the Environment was set up; one of its objectives is to prevent, monitor and solve cases of environmental pollution in order to preserve public health.

83. Article 36 of the Constitution also refers to the right to life and integrity of the person, in connection with the protection of minors. This right is also protected by the following: articles 187 and 204-206 of the Penal Code; article 40 of the Code for Members of the Medical Profession; articles 61 and 1032, paragraph 2, of the Civil Code; articles 349 and 364 of the Labour Code; articles 3 and 57 of the Health Code; article 23 of the Juvenile Code; article 2 of the Elderly Persons Act, as well as other national legislation.

84. As the Committee is aware, in December 1984 Ecuador signed the Convention on the Prevention and Punishment of the Crime of Genocide, which it ratified in November 1985. Accordingly, in international forums, it has condemned the genocidal practices and ethnic cleansing carried out in certain regions.

85. Ecuador has conducted a vigorous campaign to develop awareness among the armed forces and the police of the unconditional obligation to respect the human rights of persons detained or under investigation; as a result of its efforts, these institutions enjoy greater public support than in the past. A number of courses on the subject have been organized for military and police personnel, with the assistance of the Latin American Association for Human Rights (ALDHU), through agreements encouraged by the Ministry of Foreign Affairs between ALDHU, the Ministry of Defence, and the Ministry of the Interior and the Police.

86. There have been few known cases of disappeared persons, and complaints of improper treatment of detainees have been investigated and punished.

87. It should be mentioned that on 8 January 1988 the Restrepo Arismendi brothers disappeared and were presumed to have died at the hands of the National Police; the judicial authorities learned of the case on 15 August 1991. Several police officers were charged, tried and found guilty, in varying degrees, in accordance with the law. On 16 November 1994, the Criminal Division of the Supreme Court, in a final and unappealable verdict, sentenced seven police officers to varying terms of imprisonment, and five others to lesser sentences.

88. It should be emphasized that there have been no complaints of politically-motivated disappearances in Ecuador.

89. As fundamental objectives of its domestic and foreign policy, Ecuador has maintained unswerving commitment to the principles of international law, in particular as regards the prohibition of the use, or threat of use, of force in international relations.

90. Article 3 of the Constitution stipulates that "The Ecuadorian State proclaims peace and cooperation as the basis for international coexistence and the juridical equality of States, condemns the use or threat of force as a means of settling conflicts, and repudiates the spoils of war as a source of

rights. It advocates the settlement of international disputes by legal and peaceful methods, and declares international law to be the guiding norm for relations between States".

91. As to the guarantees provided by the State to protect public health, pursuant to article 22 (15) of the Constitution, "the State guarantees the right to a standard of living that ensures health, food ... medical assistance and the necessary social services". It adds that "the national health system, involving the public and private sectors, shall operate in conformity with the principles of universality, equity, solidarity and efficiency".

92. Article 71 of the Health Code states: "Should a health emergency occur in one or more areas of the country, the health authority shall order and adopt all appropriate measures to control, avoid the spread of or eradicate the danger, and shall immediately inform the President of the Republic in view of any constitutional and legal implications. Once the emergency is over, the said measures shall lapse, unless certain provisions are specifically maintained for a limited period".

93. In Ecuador the following bodies are concerned with health: the Ministry of Public Health (MSP), the Ecuadorian Social Security Institute (IESS), the armed forces, welfare authorities, municipalities, provincial councils, the private sector, etc. It is difficult to define precisely the coverage by each health institution, but some approximate figures are given below:

Health insurance coverage

Type of insurance	Percentage of population
IESS	9.9
Rural social security	7.8
Armed forces and police	1.1
Private insurance	1.2
Subtotal	20.0

Persons not insured but with access to services of the formal health system

Health-care services	Percentage of population
Public (MSP) (estimate)	30-40
Private non-profit (estimate)	10
Private for-profit (clinics, hospitals, surgeries)	20
Subtotal	60-70

94. According to the national statistical indicators, life expectancy for women increased from 67.6 years in 1990 to 71.4 years in 1994, while for men it increased from 63.4 to 66.4 years over the same period. Infant mortality dropped from 63 deaths per 1,000 live births in 1990 to 44 per 1,000 in 1994. The maternal mortality rate has fallen from 170 to 120 deaths per 100,000 live births (data from the National Institute of Statistics and Census).

Number of deaths, with percentages, by sex and by region, Ecuador, 1994

Region	Males		Females		Total	
	No.	%	No.	%	No.	%
Highland	14 619	51.0	12 309	54.8	26 928	52.6
Coastal	13 181	45.9	9 588	42.7	22 769	44.5
Eastern	851	3.0	557	2.5	1 408	2.8
Galapagos	38	0.1	22	0.1	60	0.1
Country total	28 689	100.0	22 476	100.0	51 165	100.0

Causes of death by sex, region and age group, Ecuador, 1994

Age	Region	Leading causes of death	
		Females	Males
1 year	Coastal	Hypoxia, birth asphyxia and other respiratory conditions of foetus or newborn Other conditions originating in the perinatal period	Hypoxia, birth asphyxia and other respiratory conditions of foetus or newborn Other conditions originating in the perinatal period
	Highland	Pneumonia Hypoxia, birth asphyxia and other respiratory conditions of foetus or newborn	Pneumonia Hypoxia, birth asphyxia and other respiratory conditions of foetus or newborn
	Eastern	Ill-defined intestinal infections Bronchitis, chronic and unspecified, emphysema and asthma	Other signs, symptoms and ill-defined conditions Ill-defined intestinal infections
1 to 4	Coastal and Highland	Pneumonia Ill-defined intestinal infections	Ill-defined intestinal infections Pneumonia

Age	Region	Leading causes of death	
		Females	Males
	Eastern	Ill-defined intestinal infections Bronchitis, chronic and unspecified, emphysema and asthma	Ill-defined intestinal infections Other signs, symptoms and ill-defined conditions
5 to 9	Coastal	Pneumonia Other signs, symptoms and ill-defined conditions	Other signs, symptoms and ill-defined conditions Motor-vehicle accidents
	Highland	Motor-vehicle accidents Pneumonia	Motor-vehicle accidents Other signs, symptoms and ill-defined conditions
	Eastern	Accidents caused by fire Other signs, symptoms and ill-defined conditions	Drowning and submersion Accidents Ill-defined intestinal infections
10 to 19	Coastal	Other signs, symptoms and ill-defined conditions Suicide and self-inflicted injury	Homicide and injury purposely inflicted by other persons Drowning and submersion Accidents
	Highland	Motor-vehicle accidents Suicide and self-inflicted injury	Motor-vehicle accidents Other signs, symptoms and ill-defined conditions
	Eastern	Suicide and self-inflicted injury Other signs, symptoms, and ill-defined conditions	Other accidents, including late effects Other signs, symptoms and ill-defined conditions
20 to 64	Coastal	Other signs, symptoms and ill-defined conditions Cardiac dysrhythmias	Homicide and injury purposely inflicted by other persons Other signs, symptoms and ill-defined conditions
	Highland	Other signs, symptoms and ill-defined conditions Motor-vehicle accidents	Motor-vehicle accidents Other accidents, including late effects
	Eastern	Other signs, symptoms and ill-defined conditions Tuberculosis	Other signs, symptoms and ill-defined conditions Other accidents, including late effects

Age	Region	Leading causes of death	
		Females	Males
65 and over	Coastal	Cardiac dysrhythmias Other signs, symptoms and ill-defined conditions	Other diseases of pulmonary circulation and other forms of heart disease Cardiac dysrhythmias
	Highland	Other diseases of pulmonary circulation and other forms of heart disease Other signs, symptoms and ill-defined conditions	Other diseases of pulmonary circulation and other forms of heart disease Other signs, symptoms and ill-defined conditions
	Eastern	Other signs, symptoms and ill-defined conditions Diabetes mellitus	Other signs, symptoms and ill-defined conditions Senility without mention of psychosis

Maternal mortality rates by region, Ecuador, 1994

Coastal	0.9 deaths per 1 000 live births
Highland	1.6 "
Eastern	2.0 "
Country total	1.3 "

Regional and national infant mortality rates by sex, Ecuador, 1994

Region	Girls	Boys	Total	Country total, girls	Country total, boys	Country total
Highland	37.0	42.3	39.7	30.7	35.6	
Coastal	25.4	29.9	27.7			
Eastern	24.5	30.0	27.3			
						33.2

Population without insurance and with no access to formal health services (estimated): 30 per cent

Estimated percentage of the population without health insurance, by type of area and by sex, Ecuador, 1994

Area	Females	Males	Total
Urban	83.0	76.4	79.8
Rural	80.7	78.5	79.5
Total	82.0	77.4	79.7

Source: SIIS (Integrated System of Social Indicators).

95. The Ministry of Public Health attaches special importance to the services for primary health care and outpatient care. The total number of health establishments in the country is 1,754, distributed among the 22 provinces. There are 128 hospitals and 113 health centres. Sanitation coverage is as follows: 79.84 per cent of the population for drinking water, 41.3 per cent for sewage disposal and 68.49 per cent for basic services, according to the 1996 WHO/PAHO report on health conditions in the Americas.

96. Although financial limitations have acted as a constraint on activities that the authorities wished to carry out for the benefit of children, primarily in the areas of health and education, efforts to meet the needs in these areas have been strengthened.

97. Funding to improve health coverage in rural areas has been obtained through an agreement signed by the Ministry of Public Health and the Inter-American Development Bank. In 1995, medical consultations totalled 7,838,786 for the country as a whole; there were 100,404 deliveries under medical supervision, 1,270,124 dental consultations and 82,451 surgical operations*.

Article 7

98. "Torture and all forms of inhuman or degrading treatment" are prohibited in Ecuador under article 22 (1) of the Constitution. These offences and the respective penalties are duly specified in Ecuadorian legislation as described below.

99. In accordance with the Constitution, articles 187, 204, 205 and 206 of the Penal Code lay down the penalties for authorities that order or carry out acts of torture in order to obtain a statement or to intimidate a prisoner. The Code states that police officers or members of the security forces who compel people to make statements through "beatings, imprisonment, threats or torture" shall be liable to prison sentences of two to five years. It adds that "Any persons who order or carry out an order for the torture of prisoners or detainees, by keeping them incommunicado for longer than the law permits or through the use of shackles, stocks, irons, handcuffs, ropes, unhygienic

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* Total percentages for 1995. Source: Statistics Department of the Ministry of Health, Quito, 1996.

(punishment) cells or other forms of torture, shall be punishable by one to five years' imprisonment and deprivation of their political rights for the same period of time".

100. Article 128 of the Code of Criminal Procedure states that an accused person may not be compelled through physical or moral coercion to incriminate himself; methods that make use of violence or drugs, or which in any way interfere with a freely supplied statement, are prohibited.

101. The use of torture and mistreatment by the police have periodically been identified as a problem by the Government of Ecuador, which has adopted a number of measures to solve it.

102. In September 1991, the President of the Republic issued Decrees Nos. 2693 and 2694 abolishing the Criminal Investigation Service (SIC) of the National Police on the grounds that some of its practices constituted cruel and inhuman treatment of offenders. The Decrees were announced on the day that the President received the report of the international commission appointed to investigate the disappearance of the Restrepo brothers.

103. It was decided that the SIC should be replaced by the Judicial Police, which is a technical body specializing in criminal investigation, described in the Code of Criminal Procedure, with the participation of the Commissioner of Police and the Under-Secretary for the Interior in order to monitor investigation activities. Training projects on human rights have also been introduced for prison warders and National Police officers with the aim of eradicating torture and inhuman treatment, which are prohibited by the national and international instruments binding on Ecuador.

104. In August 1996, the Supreme Court adopted a decision denying the admissibility of confessions obtained by means of torture. This decision overturned the sentence against the prisoners in the Putumayo case and is regarded as one more factor that will convince the National Police to cease using torture in order to obtain confessions.

105. Putumayo case. On 16 December 1993, members of the Revolutionary Armed Forces of Colombia killed 11 Ecuadorian soldiers. In the course of the search for the perpetrators of this crime, 11 individuals were arrested - 10 Colombians and 1 Ecuadorian. From the interrogations carried out it transpired that they had been involved with the Colombian guerrillas. The Tena Criminal Court sentenced 5 detainees to 12 years' imprisonment and 2 others to 6 years' imprisonment; the others had earlier been found innocent and released. In June 1996, an application was submitted for judicial review of the sentence on the grounds that there was no material proof of the acts of which the defendants were accused and, once the acquittal was announced by the Supreme Court, the prisoners were released.

Article 8

106. Ecuadorian legislation has prohibited slavery since the issuing of the "Decree on the Freeing of Slaves" in 1851.

107. In article 22 of the Constitution, paragraph 19 (a) reiterates the unwavering stance adopted by Ecuador banning "slavery or servitude in all their forms", and the second subparagraph of paragraph 12 reaffirms that "no person shall be obliged to perform unpaid or forced labour".

108. In Title II of the Constitution concerning "Rights, duties and guarantees", article 22 (12) (Sect. I) refers to: "freedom of work, trade and industry, subject to the law." In accordance with the provision referred to, the Labour Code guarantees freedom of work and contract, stipulates that all work must be remunerated and outlaws any form of forced labour. Article 46 of the Code regulates the working day and the subsequent articles determine the maximum amount of overtime to be worked for higher wages, compulsory rest periods and limitations in the event of disaster. Compliance with these provisions is monitored by the Ministry of Labour and breaches are subject to penalties ranging from a fine and compensation to criminal penalties.

109. No major infringements in the field of employment have been recorded in Ecuador. Despite the difficulties involved in the proper supervision of these regulations in the informal sector, the Ministry of Labour monitors the protection of workers' rights in that sector.

110. Article 154 of the Juvenile Code published in the Registro Oficial (No. 995) of 7 August 1992 stipulates: "The State shall protect the minor against economic exploitation and against any work or working environment that may obstruct his or her education or prove harmful to his or her health or physical, mental, spiritual, moral or social development. The State shall support and coordinate public, private or community programmes aimed at achieving the objectives set out in the preceding paragraph. The juvenile courts shall ensure that the rights of the minor are fully respected, preventing exploitation of the minor or violation of his or her rights." Article 155 prohibits "the employment of children under 14 years of age; however, the juvenile court may authorize work as apprentices by children under 12 years of age who have completed primary education. Work by minors in mines or rubbish dumps, work involving the handling of psychotropic or toxic objects or substances and night work are prohibited." According to article 156, "Parents, guardians, carers, employers or persons responsible for the working minor are strictly obliged to ensure that the minor attends an educational establishment and completes secondary education."

111. As mentioned in the present report in connection with article 24 of the Covenant, the above-mentioned standards are not always complied with since many children find themselves obliged to work before completing their primary education, either because they have been abandoned or because of the poverty of their families.

112. The following tables show the employment situation in Ecuador:

Percentage of the working population aged 12 years and over by occupational category, type of area and sex, 1994

Occupational category	Urban			Rural		
	Females	Males	Total	Females	Males	Total
Government employment	11.3	11.2	11.2	3.1	2.0	2.4
Private employment	30.3	46.7	39.8	10.0	18.9	15.8
Farm labourer	0.9	3.8	2.6	3.6	28.9	20.1
Own business	2.8	8.3	6.0	1.5	7.2	5.3
Self-employed	26.7	22.9	24.5	18.6	8.9	12.3
Own farm	0.3	0.7	0.6	11.5	17.1	15.2
Unpaid work	16.2	5.9	10.1	48.0	17.0	27.8
Domestic work	11.7	0.5	5.12	3.7	0.0	1.3
TOTAL	100	100	100	100	100	100

Net rate of participation in employment by the population aged 12 years or over, by type of area and by sex, 1990 and 1994

Area	1990			1994		
	Females	Males	Total	Females	Males	Total
Urban	33.7	74.2	53.5	50.3	78.9	63.7
Rural	25.9	83.0	55.2	55.2	90.9	73.5
Total	30.7	77.8	54.1	54.1	84.2	67.9

Article 9

113. The right to liberty is embodied in article 22 (19) of the Constitution, which states in subparagraph (h) that no one shall be deprived of his liberty except under an order in writing by a competent authority, for the time and in accordance with the formalities prescribed by law; a person caught in flagrante delicto, however, may be held without a court order for not more than 24 hours. This provision is confirmed in article 174 of the Code of Criminal Procedure.

114. Article 22 (19) (i) of the Constitution stipulates that "Anyone who is arrested shall be informed immediately of the reasons for his arrest".

According to paragraph 19 (d) and (e) of the same article, accused persons have the right to be tried by a competent court and to have the assistance of legal counsel at all stages of the proceedings.

115. Ecuador's Code of Criminal Procedure states, in article 172, that for a person to be arrested for the purposes of investigation, a signed court order is required stating the reason for the arrest and the place and date of issue of the order. Officers of the National Police and the Judicial Police are authorized to make arrests.

116. Article 177 of the Code of Criminal Procedure states that a judge may order a person to be remanded in custody when he considers it necessary, and when there are indications that an offence justifying deprivation of liberty has been committed and that the person in question participated or collaborated in the offence. This pre-trial detention will continue until evidence is submitted by the prosecutor and the defence during the pre-trial stage which concludes with an order to continue or to file the case or to initiate the trial.

117. In a normal situation, in accordance with the provisions of the law, a detainee may immediately communicate with his family. Ecuadorian law contains a number of provisions designed to ensure that the practice of incommunicado detention is strictly monitored. First, the Constitution stipulates that no one may be held incommunicado for more than 24 hours. Then, all detainees must be under some form of judicial supervision, whether it be an arrest warrant or a court order in writing, issued within the 24 hours following the arrest or remand in custody. In addition, the detainee must be charged within 48 hours.

118. Persons may not be detained in premises other than those expressly authorized by law. As part of the social rehabilitation system in Ecuador, persons due to be released are sent to "trust centres".

119. A number of procedural remedies are available to suspects, but particular attention is drawn to the importance of the remedies of amparo and judicial review.

120. In the first of these, the case is brought before the judicial bodies designated by law in order to apply for urgent measures to remedy the consequences of an unlawful act. When article 2 of the Covenant was discussed, all aspects of amparo were described. The remedy of judicial review applies to situations in which a sentence has already been handed down and is based on a number of grounds, including judicial error. In practice, however, failure to observe reasonable limits for pre-trial detention has been recognized as a critical problem in Ecuador. For this reason, in 1992, Congress promulgated amendments to the Penal Code in order to facilitate the release of persons who had been detained for a lengthy period without being tried or sentenced.

121. The preamble to the Penal Code (Amendment) Act sets forth its purpose: to modify a criminal justice system in which 70 per cent of detainees were awaiting trial or sentencing. Congress described this situation as giving rise to "a serious violation of the fundamental rights of individuals". By

law, a person detained for more than one third of the maximum sentence applicable to the offence with which he is charged must be released immediately. A person who has not been sentenced in the course of a period equal to or greater than the maximum sentence laid down must also be released. However, persons charged under the Narcotics and Psychotropic Substances Act are expressly excluded from the implementation of these provisions.

122. Article 28 states that any person who considers that he has been unlawfully deprived of his liberty may have recourse to habeas corpus. He may exercise this right personally or by proxy, without need for written authorization, vis-à-vis the mayor by whose jurisdiction he is covered or the mayor's deputy. The mayor shall immediately order the applicant to be brought before him and demand to see the order depriving him of his liberty. He shall be obeyed without comment or excuse by the officials in charge of the rehabilitation centre or place of detention. Having been informed of the facts of the case, the mayor shall immediately order the release of the applicant, if he is not brought before him or the order not presented, if the order does not comply with the legal requirements, if there have been procedural irregularities, or if the remedy has been substantiated. Any official or employee who fails to obey the order shall immediately be dismissed from his post without further formality by the mayor, who shall notify the fact to the Office of the State Controller-General and the authority responsible for appointing his replacement. Once the dismissed official has released the detainee, he may appeal to the competent bodies of the judiciary within eight days of being notified of his dismissal. Habeas corpus has been widely used and is an effective remedy for the release of wrongfully detained prisoners.

123. With reference to article 9, paragraph 5, of the Covenant, article 25 of the Constitution stipulates: "The State shall be responsible for all cases of judicial error or arbitrary detention, and in cases of violation of the provisions of article 22 (19). The law shall establish the machinery to enforce this right".

Article 10

124. The prison system in Ecuador is based on the individualized treatment of prisoners and a progressive system of rehabilitation. Article 22, (19) (c) of the Constitution states that the objective of the prison system is the "re-education, rehabilitation and social reintegration of prisoners".

125. In keeping with this, article 12 of the Code of Execution of Sentences and Social Rehabilitation states: "The objective sought by the prison system is the complete rehabilitation of prisoners aimed at their reintegration into society and the prevention of recidivism, and rehabilitation with a view to achieving a reduction in criminality".

126. Article 22 of the Code establishes separate progressive regimes to be followed in the maximum, medium and minimum security rehabilitation centres, in respect of levels of discipline, work, education and treatment. Article 14 of the Code states that the general features of the progressive system are the

individualization of treatment, the classification of offenders by biotype, the classification of social rehabilitation centres and the proper use of legal remedies for the benefit of the prisoner.

127. In chapter IV of the Code, which deals with the social rehabilitation and treatment of prisoners, article 20 states: "Detention in the social rehabilitation centres shall be divided into the following periods: internment for the criminological study and offender classification; relaxation of security regime; pre-release; non-custodial supervision; and assisted social reintegration".

128. The National Social Rehabilitation Council plans prison policy with the aim of achieving the full rehabilitation of prisoners and the proper administration of social rehabilitation centres. Four of these centres, intended for women, are located in Quito, Guayaquil, Esmeraldas and Cuenca. Mixed centres are generally to be found in the other cities, with the prison population divided by sex, in separate buildings.

129. The above-mentioned Council approves agreements with national and international institutions for programmes of assistance to prisoners and their families. The President of the Council has the task of overseeing the work of the National Directorate for Social Rehabilitation; in his absence he is replaced by the Vice-President of the Council, who is delegated by the President of the Supreme Court of Justice. The Permanent Coordinator of the Council, in consultation with the other members, is required to propose timetables for activities, report on the results of any criminological investigations, and contribute to improving links between institutions in Ecuador and abroad.

130. The Code of Execution of Sentences is in keeping with the provisions guaranteeing that prisoners are treated with dignity, which are laid down in the international covenants or Conventions in force, whether or not ratified by Ecuador.

131. According to information supplied by the Government of Ecuador to the Inter-American Commission on Human Rights, one of the shortcomings in the administration of justice is the situation of Ecuador's social rehabilitation system. The problems within the prison system derive from delays in the system of criminal justice, which leads to prison overcrowding and inadequate resources to meet basic needs. Minimum requirements, such as an adequate infrastructure, hygiene, food and access to medical care, are not always met, and this makes it difficult to meet commitments relating to the rehabilitation system.

132. The problem of overcrowding is particularly acute in the cities, which is where the majority of prisoners are located. Official figures indicate that the number of prisoners exceeds capacity in some prisons.

133. Ecuador has approximately 30 social rehabilitation centres in all, including the remand centres in Quito and Guayaquil. The prison population is mainly male, between the ages of 15 and 40, while approximately 10 per cent of prisoners are female. The system is the responsibility of the National

Directorate for Social Rehabilitation, which is governed by the policies adopted by the National Social Rehabilitation Council and is required to report to the Minister of the Interior.

134. In the period covered by this report some progress has been made in dealing with the problems of the prison system, such as: the construction of new facilities, the refurbishment of others, increasing the number of workshops and educational programmes, and the establishment of crèches in the women's prisons in Quito and Guayaquil.

135. According to the "Social and legal study of women prisoners" produced by the Ecuadorian Association of Women Lawyers in May 1996, "in the rehabilitation centres for women, population density is apparently no greater", reckoning by the number of prisoners alone. However, it must be borne in mind that in many cases these women are in prison with small children and that has led to the establishment of crèches in the women's prisons in Quito and Guayaquil. The prisoners have made use of these facilities to set up workshops which they run themselves, allowing them to earn some money.

NUMBERS OF PRISONERS BY SEX IN ECUADORIAN PRISONS

Years	Total Nos.	% Increase*	Men	% Increase	Women	% Growth
1991	7 884		6 919		965	
1992	7 998	1.45	6 982	0.91	1 016	5.28
1993	8 856	10.73	7 889	12.99	967	4.82
1994	9 274	4.72	8 263	4.74	1 011	4.55
1995	9 546	4.01	8 572	3.74	1 074	6.23
TREND		2.96		2.62		6.75

* Increase: increase in prison population.

Source: Weekly bulletins of the National Directorate of Social Rehabilitation, 2 May 1996.

136. It is important to state that since June 1992 the Ecuadorian Prison Brotherhood has been responsible for the private religious guidance programme for prisoners in No. 1 prison, which is intended to encourage the progress of prisoners through rehabilitation; the results for participants have been positive. Those who achieve the best results are eligible for transfer to the San Pablo Home, which has adequate facilities for each prisoner, good conditions of hygiene and a suitably appointed clinic. The Brotherhood is supported by priests, doctors, lawyers, social workers and other volunteers who also organize basic education programmes and workshops in Quito Women's prison and in a prison in Guayaquil.

137. Quito Women's Prison provides its inmates with vocational training and education. In Guayaquil, the women's prison allows prisoners to study for technical secondary education diplomas. A group of prisoners in No. 1 prison in Quito have been working towards self-rehabilitation through study and work, to enable them to become reintegrated into society.

138. Quito's García Moreno prison has workshops for carpentry, mechanics and handicrafts, among others, but they are unable to accommodate all prisoners. Some artistic activities, particularly music and theatre, have been encouraged, although to a limited extent.

139. The Supreme Court of Justice carried out the first national prison census in September 1993. The results of this and other efforts expedited the resolution of many pending criminal cases and in some cases led to the release of prisoners. The census ensured the immediate application of the provision that prisoners may only be accepted in these prisons in compliance with a written court order, while in other cases it made it possible to reduce sentences on grounds of good behaviour, leading to the release of hundreds of prisoners.

140. The Latin American Development Corporation, on the basis of an agreement with the Supreme Court, has designed and set up a database for the follow-up of all criminal cases where persons have been detained, whether or not they have been sentenced. The programme has made it possible to expedite the release of some 800 prisoners, or nearly 10 per cent of the prison population.

141. Persons charged with drug trafficking offences are subject to special legislation. In compliance with the commitments arising from its accession to the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna, 1988), Ecuador has updated its legislation in this regard with the promulgation, in September 1990, of the Narcotic Drugs and Psychotropic Substances Act, whose provisions conform to the above-mentioned Convention and are in keeping with the State policy of combatting offences relating to the production, consumption and illicit trafficking of drugs. Ecuador thereby hopes to avoid the adverse effects of drug trafficking which undermine the economic, social and political foundations of society. A copy of this Act is appended for information purposes*.

Article 11

142. The provisions of the Covenant as contained in this article have been incorporated into Ecuadorian legislation in their entirety. Article 22 (19) (b), of the Constitution states: "No person may be imprisoned for debts, costs, fees, taxes, fines or other obligations except in the case of compulsory maintenance".

143. This provision has not always been observed. Infringements have occurred, especially in rural areas, for the purpose of ensuring the payment of debts. When such infringements come to the attention of the authorities, they impose the appropriate penalties.

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* Available for consultation in the files of the Centre for Human Rights.

144. Up to 1994, police superintendents were empowered to issue warrants of arrest, but this power was withdrawn in order to avoid abuses*. At the present time, the powers of police superintendents are restricted to carrying out inquiries to establish material proof, notifying protests against cheques and carrying out the procedural acts ordered by their superiors.

Article 12

145. Article 22 (10) of the Constitution guarantees Ecuadorians and aliens legally residing in the country "the right to liberty of movement within the national territory and freedom to choose their residence".

146. There are no legal restrictions on the freedom of movement of aliens within the country. Ecuador is visited by many tourists who come to admire its natural beauties and its culture while other visitors come to make investments, which are guaranteed by the relevant legislation.

147. Article 14 of the Constitution guarantees aliens legally resident in the country the same rights as Ecuadorians within the limits established by law. In conformity with this provision, article 2 of the Aliens Act states: "Aliens who have been admitted to the national territory shall have the same rights and obligations as Ecuadorians except as provided for in the internal law of the State."

148. Article 22 (10) of the Constitution, already referred to above, states that "Ecuadorians are free to enter and leave Ecuador. Aliens are subject to the provisions of the law".

149. Article 5 (3) of the Immigration Act states that persons who do not comply with the enactments and regulations are not permitted to enter or leave the country.

150. Article 18 of the Act states that police officials of the Immigration Service may allow aliens who have entered Ecuador legally to leave the country of their own free will, as well as aliens to whom the provisions of article 9 (2), (3) and (5) of the Act apply: persons not in possession of a passport valid for at least six months, or some other travel document recognized by international agreements valid in Ecuador, and a valid visa issued by an official of Ecuador's Foreign Department; persons under 18 years of age, unless accompanied by their legal representatives or travelling with their express authorization; and persons whose visa has been improperly issued or whose application for admission does not meet the conditions of immigration status or category.

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* Suspension of the right of police superintendents to issue warrants of arrest, Registro Oficial (No. 574) of 23 November 1994; partial powers of police superintendents, Registro Oficial (No. 848), Act 104 of 22 December 1995.

Article 13

151. Article 19 of the Immigration Act provides for the deportation of aliens who have entered the country legally; it states that the Ministry of the Interior, through the Immigration Service of the National Civil Police, shall deport any alien subject to Ecuadorian jurisdiction living in the country in the following cases: any person sentenced for an offence under Ecuadorian law, once the sentence has been made enforceable the sentence served or pardon obtained, and common criminals who cannot be tried in Ecuador for lack of territorial jurisdiction.

152. It devolves on the Commissioner of Police to initiate legal proceedings for the deportation of aliens on the basis of a specific report from the Immigration Service police or of notification by a judge or court, by the governor of the prison establishment or by the Director of the Consular Department of the Ministry of Foreign Affairs.

153. If the alien subject to criminal proceedings for deportation is remanded in custody, the Commissioner of Police must, within 24 hours of initiating the pre-trial proceedings, make provision for the designated representative of the Government Procurator's Office, the alien and his assigned counsel to appear before him on the date and at the time he establishes in the summons to the hearing at which the deportation decision will be handed down. The above provisions must be complied with in full.

154. Article 17 of the Constitution grants the right of asylum to aliens in accordance with the law and international conventions. The Aliens Act provides, in article 6, that "Aliens who have been forced by war or political persecution to leave their country of origin, in order to save their lives or protect their freedom, may be admitted to the country as refugees by the Government of Ecuador, in compliance with the respective international conventions or, if none such exist, in pursuance of domestic legislation". At the present time, Ecuador has accepted more than 80 refugees from various countries.

Article 14

155. The rules described in paragraphs 26 to 29 and 39 to 62 of the second periodic report of Ecuador, in paragraphs 39 to 52 and 58 to 71 of the supplementary report and on pages 47 to 57 of the report of the Minister of the Interior, annexed to the latter, are still in force. Further relevant information is given below with particular emphasis on the reforms adopted to modernize the judiciary and the action taken to improve its efficiency.

Paragraph 1

156. The principles set out in article 14 of the Covenant are contained in the following provisions of the Constitution: article 22 (6), concerning equality before the law, which states: "Discrimination is prohibited on grounds of age, race, colour, sex, language, religion, political or any other affiliation, social origin, financial situation or birth"; article 14, which guarantees aliens the same rights as Ecuadorians within the limits established by law; and article 20, according to which the State "guarantees to all

individuals, whether men or women, subject to its jurisdiction, the free and effective exercise and enjoyment of the civil, political, economic, social and cultural rights set forth in the declarations, covenants, conventions and other international instruments in force".

157. As a result of the constitutional reforms which came into force on 23 December 1992, substantial progress has been achieved in "modernizing the administration of justice by making it more rapid and efficient and providing it with the necessary means to carry out its functions". As a result of these reforms, the Supreme Court of Justice under its President adopted a series of measures to expedite formalities and make the system more efficient; the number of judges on the court was increased from 16 to 31 and changes were made in their jurisdiction with the establishment of 6 specialized divisions, each with 5 judges; higher academic and professional qualifications were laid down for judges; the functions of judicial review were extended; measures were taken to depoliticize the judiciary, which is still a subject of national debate; and for the first time a National Council of the judiciary was included in Ecuador's legal system, as the administrative and governing body of the judiciary. The law will determine its composition, how its members are to be chosen, its structure and its functions. Congress is in the process of considering the relevant bill.

158. Composition of the judiciary:

Supreme Court of Justice

Year		M	F
1994	Judges	31	0
	Associate judges	6	0
1996	Judges	30	1
	Associate judges	6	0

Other bodies of the judiciary

High Court

Year	Total	M	F
Judges			
1994	178	173	5
1996	178	175	3
Criminal court judges			
1994	100	86	14
1996	(data not available)		

Criminal court magistrates

1994	123	113	10
1996	(data not available)		

Civil court judges

1994	233	206	27
1996	(data not available)		

Labour tribunal judges

1994	30	20	10
1996	(data not available)		

Rent tribunal judges

1994	18	9	9
1996	(data not available)		

Transport tribunal judges

1994	52	48	4
1996	(data not available)		

159. Congress selects the members of the Supreme Court of Justice, which is the highest court, together with the members of the courts of audit and the Administrative Court. Bodies of the judiciary appoint the high court judges and the civil and criminal judges, a practice that has reduced the interference of political parties in the appointment of judges, as this undoubtedly affects the independence of the judge in carrying out his duties.

160. The Supreme Court acts as court of cassation in all matters, whereas before the reforms were implemented, it performed this function only for taxation and criminal matters. This remedy is now being better utilized, its aim being to defend the law, in a particular situation, against errors in the application or interpretation of substantive or adjectival rules of law by the judges of lower courts. The Cassation Act has made the administration of justice more rapid and efficient. This Act also governs the activity of the court of cassation, indicates in advance the limits that cannot be exceeded and monitors compliance with the law maintaining public order.

161. In section III of the Constitution, entitled "Government Procurator's Office", article 141 states: "The functions of the Government Procurator's Office are exercised by the Procurator-General, the district procurators, the prosecuting officers and the other officials determined by the law." Article 142 states: "The Procurator-General must meet the requirements for becoming a judge of the Supreme Court of Justice and shall remain in office for four years. He shall be appointed by the National Congress from a short list provided by the President of the Republic. He shall have the powers, authority and duties determined by the law. In the performance of its duties, the Government-Procurator's Office shall conduct the preliminary inquiries and the criminal investigation with the support of the Judicial Police."

162. Details of the composition of the Government Procurator's Office

	Officially-appointed defence lawyers	Total	M	F
1994		21	18	3
1996		21	(data not available)	

163. Article 118 of the Constitution recognizes the system of arbitration, negotiation and other alternative procedures for the settlement of disputes. Arbitration is fully operational through the Quito Chamber of Commerce and efforts are being made to implement a similar system in the chambers of commerce in the rest of the country.

164. It should also be pointed out that the financial resources allocated to the judiciary have been increased in order to improve the administration of justice in Ecuador. The State of Ecuador has encouraged the establishment of an administrative unit to monitor and coordinate the judicial reforms.

165. Civil society has seen the appearance of a number of NGOs which support the process of judicial reform, especially in the area of procedure. Thus, by way of an example, the Latin American Development Corporation (CLID), a non-profit-making non-governmental body, has been leading a process to draft new codes of civil and criminal procedure in which civil servants have actively collaborated.

166. The constitutional reforms of 1996 created the office of Ombudsman and introduced the right of amparo and the remedy of habeas data; they also extended the powers of the Constitutional Court. All these reforms have been mentioned in connection with article 2 of the Covenant.

Paragraph 2

167. With regard to article 14, paragraph 2, of the Covenant, it should be pointed out that article 22 (19) (g) of the Constitution states that "every person is presumed innocent until declared guilty in an enforceable judgement".

168. Article 168 of the Juvenile Code stipulates that the basic guarantees set out in the Constitution, domestic legislation and international conventions shall be respected in all proceedings involving a minor. In particular a minor shall be presumed innocent of the commission of an act; the minor and his representatives shall be notified of all the procedural steps; the minor shall not be obliged to testify and may remain silent; the minor may confront the witnesses; the right to the presence of the parents or guardians at all stages of the proceedings shall be respected; and any minor who needs it shall be provided with free legal and technical assistance. Cases in which a minor is involved shall be dealt with swiftly and the proceedings shall be confidential except for the parties concerned.

Paragraph 3

169. Subparagraphs (a) and (f). Article 22 (19) (i) of the Constitution states that everyone shall be informed immediately of the reason for his arrest.

170. Article 101 of the Code of Criminal Procedure establishes the right of every individual to be informed and tried in his own language. For this purpose an expert translator must be appointed and be present during the testimony of the person on trial. A record of the questions and answers during the proceedings must be drawn up in Spanish. Article 102 of the Code states that "if the person giving evidence is deaf and dumb, he shall provide his testimony in writing; and if he cannot write, the court shall hear the evidence with the aid of an interpreter or, failing that, of a person accustomed to communicating with the person giving evidence".

171. Subparagraphs (b), (d) and (e). The Constitution establishes the right to the presence of a defence lawyer during all questioning. The pre-trial or administrative proceedings have no evidential effect in the absence of the defending counsel and the representative of the Government Procurator's Office. The provisions of the Constitution on this subject are as follows:

(a) Article 19 (17) (e): "No one may be sentenced without a trial or deprived of the right of defence at any stage of the proceedings. Any person accused of a criminal offence shall have the right to a defence lawyer and to compel witnesses for the defence to appear before the court";

(b) It should be noted that, under article 120 of the Constitution, "In criminal cases and cases involving employment, maintenance, minors and public order, the administration of justice is free of charge";

(c) Article 135: "The State shall appoint official defence lawyers in respect of the patrimonial rights of the indigenous communities, workers and any person without financial resources".

172. The Supreme Court has now established the posts of public official defence lawyers in all the high courts of Ecuador. A programme for improving the system of officially assigning counsel for people whose poverty makes it difficult for them to obtain a defence lawyer has also been introduced with the assistance of the United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders.

173. In addition, the judicial authorities are studying proposals to adopt oral proceedings in some trials because of their efficiency, transparency and flexibility. The prosecutor and the defence lawyer would be responsible for supplying the evidence and the judge would act as a neutral arbiter and would ensure compliance with all the procedural requirements.

174. Subparagraph (c). Article 121 of the Constitution stipulates that trials shall be public, except in the cases provided for by law, but that the courts may deliberate in secret. No case may be heard at more than three levels. In accordance with the Organization of the Judiciary Act, all persons committed for trial are entitled to a defence.

175. The Ecuadorian system is designed to ensure that criminal cases are dealt with without delay. The criminal procedure is divided into stages: the pre-trial proceedings or initial investigation stage, which serves to prove that an offence has been committed and to determine and identify the perpetrators, accomplices and accessories after the fact; the intermediate stage, in which the prosecutor makes the formal accusation; and the trial and appeal.

176. Article 231 of the Code of Criminal Procedure stipulates that the initial stage must be completed within a period of 60 days. Articles 235 to 240 specify the duration of the intermediate stage, which in exceptional cases may be extended to up to 51 days if the initial stage is reopened on the initiative of the judge or at the request of the parties in order to carry out some action that had been omitted. By that time the charges may have been withdrawn or the trial stage initiated. The Code of Criminal Procedure requires, therefore, that the stage preceding the trial of a criminal case must be completed within a period of 111 days. Unfortunately, owing to the backlog of pending trials and the lack of funds to set up more courts or tribunals, the stated time limits are rarely complied with.

177. Subparagraph (g). Articles 124 and 125 of the Code of Criminal Procedure establish a bar on testifying against oneself and that such testimony may only be regarded as a basis for investigation.

Paragraph 4

178. The Juvenile Code (chap. IV) fully reflects the principles set out in paragraph 4 of article 14 of the Covenant.

Paragraph 5

179. Articles 346 to 348 of the Code of Criminal Procedure have established four legal procedures to enable defendants to appeal to higher courts, according to the situation produced by the handling of the case. They may present or submit the following applications for remedy to the higher courts: for appeal, for annulment, for judicial review for error of fact and for judicial review for error of law.

Paragraph 6

180. Article 23 of the Constitution stipulates: "The State and other public sector bodies shall be obliged to compensate private individuals for any loss or damage they may suffer as a consequence of the public services or of the acts of their officials and employees in the performance of their duties."

181. The right to compensation for judicial error is dealt with in article 24 of the Constitution.

Paragraph 7

182. Article 160 of the Code of Criminal Procedure stipulates that "no one shall be tried or punished more than once for the same act".

183. The foregoing demonstrates that the provisions contained in article 14 of the Covenant have been incorporated into Ecuadorian legislation. As part of the reforms under way, the State is endeavouring to ensure their proper application in spite of the constraints, particularly those of a financial nature, that are affecting the judiciary.

Article 15

184. In its domestic legislation Ecuador fully applies the principles embodied in this article of the Covenant concerning the non-retroactivity of criminal laws and allowing offenders to benefit from laws introduced after the offence was committed, if those laws impose lighter penalties than those applicable at the time when the offence was committed.

185. These principles are recognized in article 22 (19) (c) of the Constitution, which states: "No one shall be prosecuted for an act or omission which was not defined or punishable as a criminal offence at the time when it was committed, nor may any penalty not provided for by law be imposed. In cases where two criminal laws are in conflict, the less rigorous law shall be applied, even if it was passed subsequent to the offence. The criminal law shall establish proper proportionality between offences and penalties. In the event of doubt, the criminal law shall be applied in the manner most favourable to the defendant."

186. Article 2 of the Penal Code states: "No one may be prosecuted for an act that has not been specifically declared an offence under the criminal law, or undergo a penalty that is not laid down in that law. The offence must have been declared as such and the penalty established, prior to commission of the act. An act ceases to be punishable if a law subsequent to its commission removes it from the list of offences; and, if sentence has already been passed, the penalty shall be extinguished, whether or not its implementation has begun. If the penalty established by the law at the time of sentencing differs from that in force when the offence was committed, the lighter sentence shall be imposed. In general, all subsequent laws concerning the effects and extinction of actions and penalties shall be applied insofar as they are favourable to the offender, even though an enforceable sentence has been passed."

Article 16

187. The third periodic report provided information on the legal provisions in force in Ecuador concerning the right of every human being to recognition as a person before the law.

188. Article 60 of the Civil Code provides that: "The birth of a person shall establish the principle of his legal existence, after he has been completely separated from his mother. An infant who dies in his mother's womb or who dies before being completely separated from his mother shall be regarded as never having existed. It shall be assumed that an infant is born alive; any person alleging the contrary in support of a right shall be required to prove his case."

189. Article 35 of the Constitution reads: "The State shall protect parents in the exercise of their parental authority and safeguard the fulfilment of the mutual obligations of parents and children. The latter have the same rights regardless of their filiation .... The child shall be protected from the time of conception. Protection of the minor is guaranteed so as to ensure that his growth and development are conducive to his moral and physical well-being and his life in the home."

190. Alongside the aforementioned principle, article 61 of the Civil Code states: "The law shall protect the life of an unborn child". At the request of any person or ex officio, the court shall therefore take any measures it deems appropriate to protect the life of an unborn child which it believes may be in some danger.

191. In the case of an offence committed by the mother, any penalty that might affect the life or health of her unborn child shall be postponed until after the birth.

192. The Constitution provides that: "When a birth is registered no statement has to be made with regard to the type of filiation; and, when the identity document is issued, no reference shall be made to the type of filiation or to the fact that the child is adopted." The Act on Civil Registration, Identification and Documentation and the Juvenile Code stipulate that the birth of a child must be registered immediately.

193. The legal system in Ecuador guarantees the expression of legal personality by every individual in civil, political, educational, cultural and economic matters, without distinction of sex, nationality, marital status, beliefs or racial or economic conditions.

194. The Civil Code contains special rules concerning the guardianship of mentally disordered persons, whereby an adult who is in a habitual state of mental disorder shall be deprived of the administration of his property even though he has periods of lucidity. When a mentally disordered child reaches puberty, the father or mother may continue to look after the child's person and property until he reaches majority, at which time interdiction proceedings shall be instituted. In the case of mentally disordered adults, interdiction can be instituted by their family members and, failing these, if their insanity takes a violent form or if the insane person should cause substantial inconvenience to the local inhabitants, any authority or person in the district may request such an interdiction. The court shall inquire into the case history of the mentally disordered person, but may not pronounce an interdiction without personally examining the person concerned and questioning him with the aim of determining his state of sanity.

Article 17

195. Ecuador, aware that honour reflects the esteem and respect in which human dignity is held and mindful of the importance of defending the good opinion and reputation of individuals, recognizes in title 2, article 22 (4), of its Constitution "the right to honour, to a good reputation and to personal and family privacy. The law shall protect the name, image and voice of the individual". Article 22 (5) states that "any person who is harmed by

incorrect statements or whose honour is impugned by publications in the press or other mass media, shall be entitled to insist on free, immediate and proportional rectification by the latter".

196. Title VII, article 489, of the Penal Code deals with offences against honour and stipulates, with regard to defamation, that "it is calumnious when it consists in the false accusation of an offence; and non-calumnious when it consists in any other statement designed to discredit, dishonour or disparage another person or in any action performed with the same object".

197. To supplement the above provision, article 491 of the Penal Code states: "A person found guilty of calumnious defamation shall be punished by a prison term of six months to two years and a fine of 45 sucres if the allegations were made: in public meetings or places; in the presence of 10 or more persons; by means of written texts, whether printed or not, illustrations or emblems exposed to public view; or by means of texts that were not published but sent or communicated to other persons, including letters". Article 492 states that "persons making allegations privately or in the presence of fewer than 10 people shall be punished by a prison term of one to six months and a fine of 45 sucres".

198. Article 268 of the Penal Code states: "A public employee who makes advances to a woman who has claims whose settlement comes within his competence shall be punished by one to three months' imprisonment"; and article 269 provides that: "A public employee who makes advances to a woman who is in his custody, by virtue of his office, shall incur a penalty of one to five years' imprisonment and be disqualified from public office for two years. If the woman to whom advances were made was the wife, daughter, mother or sister of a person he had in his custody, the offender shall incur the same penalty as set out in the previous subparagraph."

199. The provisions mentioned in paragraphs 66 to 77 of the second periodic report, in paragraphs 78 and 79 of the supplementary report and in section 9 (a) on page 65 of the report of the Minister of the Interior, annexed to the latter, are still in force, as is the information provided in the corresponding part of the third periodic report concerning secrecy and the inviolability of the right to privacy, interference with the telecommunications service, and the secrecy and inviolability of correspondence.

200. The inviolability of the home is established in article 22 (8) of the Constitution: "No one may enter it or carry out inspections or searches without the authorization of the person living in it or by court order, in the cases and in the form laid down by the law." This right is also enshrined in articles 191 to 196 of the Penal Code and in articles 203 and 204 of the Code of Criminal Procedure.

201. Article 22 (9) refers to the inviolability and secrecy of correspondence. It states that correspondence may only be seized, opened and examined in the cases provided for by law. Secrecy must be observed with regard to matters unrelated to the matter that justified examination of the correspondence. The same principle must be observed with regard to telegraphic, cable, telephonic, electronic and other similar communications.

Documents obtained through the violation of this guarantee have no validity in court and those responsible will be punished in accordance with the law.

202. In chapter IV of the Regulations on the Services of the National Post Office relating to the secrecy and inviolability of correspondence, article 10 states: "The secrecy of correspondence relates not only to the content of correspondence, but also entails an absolute prohibition for employees to supply any information on the existence, address, number or other external circumstances of the dispatches they handle. Employees shall not supply information or give data concerning postal operations of any kind for which they are responsible unless they are expressly authorized to do so by the Director-General." Article 11 of the Regulations states that "the following affect the inviolability of correspondence: the arbitrary or illegal detention of correspondence, its deliberate misrouting, opening, removal, destruction, retention or concealment and, in general, any breach of trust while it is in the keeping of the postal services".

203. The rights to which this article of the Covenant refers have been respected in Ecuador, except for some isolated incidents that occurred during the six months of the Government of ex-President Abdalá Bucaram, when attempts were made to violate press freedom in Ecuador by means of threats and verbal attacks on the media.

Article 18

204. Article 22 (7) of the Constitution establishes, as one of the guarantees of the rights of persons, "freedom of conscience and religion both individually and collectively, in public or in private. Persons may freely practise the religion they profess, subject only to such restrictions as the law may prescribe to protect security, public morals or the fundamental rights of other persons". In addition, article 22 (15) sets out the right of persons "to remain silent about their political and religious convictions. No one may be forced to state them except in the cases provided for by law".

205. Ecuadorian positive law as contained in the Constitution and in secondary legislation guarantees freedom of belief and religion without restriction, unless the form of worship professed individually or collectively by citizens is detrimental to public morals or to the rights of other persons. This right is observed without restriction in Ecuador and there have been no complaints of violations of freedom of worship.

206. On 30 September 1994 the Educational Freedom of the Family in Ecuador Act was passed and was published in the Registro Oficial (No. 543) dated 4 October 1994, annexed to this report*. This Act promotes the teaching of a religion or form of worship to students who wish to receive it, thereby reflecting the desirability of strengthening the moral basis of Ecuadorian society.

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* Available for consultation in the files of the Centre for Human Rights.

Article 19

207. The provisions of this article of the Covenant are embodied in article 22 (5) of the Constitution, which guarantees "the right to freedom of opinion and to the expression of views through any of the mass media, without prejudice to the duties and obligations laid down by law ... Any person who is harmed by incorrect statements or whose honour is impugned by publications in the press or other mass media shall be entitled to insist on free, immediate and proportional rectification by the latter".

208. Article 527 of the Penal Code states: "Anyone who displays, sells or distributes songs, leaflets or other written matter, whether printed or not, diagrams or illustrations that are contrary to public morals shall be punished by one to six months' imprisonment and a fine of 45 sucres", while article 528 stipulates that "the author of the written material, diagram or illustration and the person who printed or reproduced it shall be punished by three months' to one year's imprisonment, a fine of 40 to 80 sucres and confiscation of the immoral work".

209. Restrictions on freedom of expression may be imposed in accordance with the constitutional and legal provisions applying to a state of emergency.

210. It must be stressed that Ecuador respects the freedom of the press. Except in a few isolated cases that occurred during the period covered by this report, the authorities have not interfered with the media, which with complete liberty publish a good deal of political comment critical of the Government.

Article 20

211. Article 1 of the Constitution "proclaims peace and cooperation as the basis for international coexistence and the juridical equality of States, condemns the use or threat of force as a means of settling conflicts, and repudiates the spoils of war as a source of rights. It advocates the settlement of international disputes by legal and peaceful methods, and declares international law to be the guiding norm for relations between States".

212. The State of Ecuador has taken the promotion of peace in international relations as the fundamental principle of its external and internal policy. It was solely on account of acts of aggression by its neighbour to the south that Ecuador found it necessary to exercise the right of self-defence set out in Article 51 of the Charter of the United Nations.

213. As was stated in the comments in this report on article 2 of the Covenant, the Penal Code expressly prohibits incitement to, or the performance of acts conducive to racial discrimination or the dissemination of ideas based on racial superiority or hatred. It establishes criminal penalties of between three months' and two years' imprisonment for persons who commit these offences, who incite racial discrimination or perform acts of violence for that reason, or who support organizations that foster racial discrimination,

who participate in racist activities or who belong to such organizations. If these offences were ordered or committed by public officials, the penalty will be between one and five years' imprisonment.

214. Ecuador has ratified the International Convention on the Elimination of All Forms of Racial Discrimination of 1965, and has brought its domestic legislation into line with the provisions of the Convention.

215. Unfortunately, despite the efforts being made to eradicate the remnants of racial discrimination, such discrimination still exists in practice, affecting the indigenous population and the Afro-Ecuadorian communities. The information provided in this report on article 27 of the Covenant highlights the policies adopted to overcome this problem and to raise the standard of living of the ethnic groups.

Article 21

216. Article 22 (14) of the Constitution lists, among the guarantees given by the State, "the right of association and of free assembly for peaceful purposes".

217. It has been the practice in Ecuador to hold public demonstrations of a political nature, especially during electoral campaigns, with the aim of peacefully expressing support for candidates standing for offices subject to election by the public. Such meetings or marches have taken place in complete freedom.

218. Similarly, events of various kinds have been organized with the participation of students, trade unions and organizations representing particular classes, women and ethnic groups to protest against unpopular measures or actions taken by Governments. In some cases these demonstrations have been suppressed by the security forces, mainly through the use of tear gas.

219. On 5 February 1997 an unprecedented and massive nationwide strike was held with the estimated participation of over 2.5 million people drawn from all sectors of civil society: workers, trade unions, employers' organizations, political leaders, former presidents of the Republic, former candidates for the presidency, mayors, prefects, organizations representing women and various ethnic groups, students - in short, all strata of the Ecuadorian people - in order to make a peaceful protest against unpopular acts and measures taken by the Government of former President Abdalá Bucaram and to call upon Congress to remove him from office. During this demonstration the Ecuadorian police fulfilled their obligation under the law to respect such a peaceful protest, in which there was no bloodshed and not a single act of vandalism was committed by the demonstrators. This mass demonstration led to the dismissal of the President by Congress within the framework of the Constitution.

220. As a follow-up to the strike a large rally was held in the centre of Quito on 7 February. It was suppressed by the use of tear gas, as a result of which one person was injured but was immediately attended to by the medical services.

Article 22

221. During the discussion of article 21 of the Covenant it was pointed out that the right to freedom of association is guaranteed in article 22 (14) of the Constitution. In addition, article 43 of the Constitution stipulates that the State must provide assistance for the organization and promotion of the various sectors of society, particularly the rural sector, in moral, cultural, economic and social matters, in order to encourage their participation in the development of the community. The final subparagraph of article 43 stipulates that the State will also "promote social and civic service by women and encourage the formation of women's groups aimed at the integration of women into employment and national development, and promote the training of women in rural areas and in marginalized sectors of society".

222. The period covered by this report has seen the formation of a large number of NGOs representing ethnic groups, women, professionals, people interested in environmental conservation and others seeking to achieve various other legal objectives. This demonstrates that the right of association is fully exercised in Ecuador.

223. Furthermore, this right is fully protected by articles 41 (10), 43 (1), 436, 437, 441, 447, 453 and 454 of the Labour Code and by the Civil Service and Administrative Professions Act, which gives public employees the right to form associations.

224. Article 43 (1) of the Constitution contains constitutional reforms, codified in January 1996, which guarantee "the right of workers and employers to organize, and the right of such organizations to operate freely without prior authorization and in accordance with the law. For all matters concerning labour relations within public sector bodies, the labour sector shall be represented by a single organization". Article 43 (3) "recognizes and guarantees the right of workers to strike in their respective undertakings, and the right of employers to lock workers out, in accordance with the law".

225. It has also been provided that workers in the public sector will be governed by the Civil Service and Administrative Professions Act and workers in the private sector by the Labour Code.

226. Free association in trade unions is extensively protected by the State, as is the formation of professional associations, which may in turn form federations, confederations or any other groups. Such organizations, which have legal personality, may not be dissolved without judicial proceedings. The authorities of the Ministry of Labour have an obligation to support and encourage them.

227. As stated in the third periodic report, the Penal Code provides for a prison sentence ranging from one month to one year for any owner or employer who coerces another person to join or leave a workers' organization. In addition, organizations that promote racial discrimination and carry out attacks on persons or property are prohibited and declared unlawful.

228. The Companies Act places some restrictions on the setting-up of companies. Articles 100 and 157 prohibit partnerships between parents and dependent children and between spouses in limited liability companies and in joint stock companies.

Article 23

229. The family is protected by the Constitution. Articles 32 to 34, 38, 42 (1), 49 and 64 contain a series of provisions to safeguard the well-being of the family.

230. Article 32 stipulates: "The State protects the family as the fundamental unit of society and guarantees it the moral, cultural and economic conditions conducive to the attainment of its ends. It also protects marriage, motherhood and family assets."

231. The equality of men and women within marriage is guaranteed in article 32 (3), which states: "Marriage is based on the free consent of the contracting parties and on the equal rights, obligations and legal capacity of the spouses."

232. In addition, Ecuador recognizes de facto union in article 33 of the Constitution, which states: "A stable and monogamous union between a man and a woman who have no marriage ties with any other person and who form a de facto household for the period and under the conditions and circumstances laid down by law shall give rise to a community of assets which shall be subject to the regulations governing the marriage partnership."

233. Article 34 of the Constitution "encourages responsible parenthood and a proper upbringing for the advancement of the family, guarantees the right of the parents to have as many children as they can maintain and bring up" and recognizes the family estate as not being subject to attachment.

234. With regard to marriage, the amendments to articles 95, 101 (1), 114 (2), and 136 of the Civil Code, approved by Congress in 1989 and reported to the Committee in the third report, remain in force. They concern consent to marriage, the rights and obligations of the spouses, the grounds for divorce, the family estate and the guardianship of minors, and place women on an equal footing with men.

235. It should be pointed out that article 81 of the Code, as amended, defines marriage in the following terms: "Marriage is a solemn contract by which a man and a woman form a union for the purpose of living together, having children and aiding one another", while article 134 states that: "the spouses shall be under an obligation to remain faithful to, and to aid and assist, one another in all circumstances ..." and that "marriage is based on the equal rights and duties of both spouses".

236. Furthermore, article 135 stipulates that "the spouses shall choose their place of residence by mutual agreement"; article 138 states that the ordinary administration of the conjugal partnership is the responsibility of both

spouses, while article 139 provides that "neither the wife nor the husband shall require the authorization of the other to dispose of his or her own property either in a will or inter vivos".

237. As far as the dissolution of the marriage tie is concerned, the Civil Code contains provisions (identical for men and women) stating that, once a marriage has been dissolved by divorce, both spouses are free to remarry. Divorce by mutual consent continues to exist and article 115 still makes agreement by the parents on the financial arrangements for their minor children an essential prerequisite for the granting of the divorce decree.

238. The purpose of the Act Prohibiting Violence against Women and the Family is to protect the physical and mental well-being and sexual freedom of women and family members, through the prevention and punishment of violence within the family. Its provisions should guide the policies of the State and community in this field. For the purposes of this Act, members of the family unit are considered to be the spouses, their forebears, descendants, brothers and sisters and their relatives up to the second degree of relationship. The protection afforded by the Act will extend to ex-spouses, cohabitants and former cohabitants and persons with whom there is or has been an agreed partnership relationship, and to persons sharing the home of the attacker or the victim. Detailed information on the Act is contained in the comments on article 3 of the Covenant.

Article 24

Paragraph 1

239. Ecuador signed the Convention on the Rights of the Child on 26 January 1990 and deposited the corresponding instrument of ratification on 23 March 1990. This Convention forms part of the law of the country, as a State party to the Convention, Ecuador has adopted a series of measures in order to produce a climate in which the rights recognized in the Convention are respected and implemented.

240. Ecuador has incorporated the rights of the child into its domestic legislation and into the policies for children that are included in the National Development Plan, taking into account the fact that children are one of the most vulnerable groups in society by virtue of their biological, social, economic, cultural and psychological conditions. It should be pointed out that 45 per cent of the population of Ecuador is under 18 years of age.

241. Article 22 (6) of the Constitution, which relates to equality before the law, "prohibits any discrimination" on grounds of social origin, financial situation or birth, while article 35 "protects parents in the exercise of their parental authority and safeguards the fulfilment of the mutual obligations of parents and children. The latter have the same rights regardless of their filiation". Article 36 establishes the right of minors to protection by their parents, by society and by the State, in order to safeguard their life, physical well-being, health, education, identity, name and nationality. Children "shall be consulted in accordance with the law, and

especially protected from abandonment, physical or moral violence, and exploitation through child labour. Their rights shall prevail over the rights of others".

242. The Juvenile Code conforms strictly to the Convention on the Rights of the Child. Title II of the Code, "The Minor as the Subject of Law", states that every minor has the right to live within the family and, in the event of being deprived of that, shall enjoy the special protection and assistance of the State. This title contains a series of provisions that guarantee children the rights to life and health, to freedom, respect and dignity, to education and culture, to identity, and to association and expression; it covers the special rights of children with physical or mental disabilities and the right to preferential and priority treatment in the event of natural disasters, social catastrophes and armed conflict.

243. Article 21 of the Code stipulates that children must enjoy freedom to enter and remain in public places and communal areas; freedom of expression and opinion; freedom of belief and religious worship; freedom to play and practise sports and recreation in a healthy manner; freedom to take part in family and community life; freedom to take part in public and political life, subject to the restrictions imposed by the Constitution and by law; freedom to seek shelter and receive assistance and guidance if they are abused; and freedom to approach the competent authorities in the event of a conflict of interests with their parents or those in charge of them.

244. As regards the relations of children with the parents in the event of divorce, the Juvenile Code states, in article 52 of section III concerning the custody of minors: "The custody of the children shall be agreed between the parents if they are not living together, provided that the agreement is beneficial to the minor and that the necessary measures for its fulfilment are taken". Article 53 stipulates: if there is no agreement between the parents or if the agreement is harmful to the material or moral interests of the minor, the courts shall settle the matter, being guided by the best interests of the minor" and by the following recommendations: if the minor has lived for a long period with one of the parents, the appropriateness of remaining with that parent shall be examined; for the care of children below the age of puberty, without distinction of sex, and of girl children of any age, preference shall be given to the mother who is divorced or separated from the husband; boys who have attained puberty shall be in the custody of the parent of their own choosing. Article 61 provides that: "The court shall state the reasons for its decision concerning custody. One factor to be taken into consideration shall of necessity be the view expressed by the minor during the hearing".

Custody of minors

Total cases submitted	Submitted by mothers	Submitted by fathers	% of cases won	
			By fathers	By mothers
1 670	1 180	490	20%	80%

(Juvenile Courts, Pichincha)

Source: Diario Hoy, 8 February 1997.

245. Article 66 of the Juvenile Code states that "the father and the mother each have the obligation to provide maintenance according to their respective economic capacity. This obligation involves meeting the needs of the minor for subsistence, accommodation, education, clothing and medical care". Article 68 of the Code states that "the amount of the maintenance shall be determined, provisionally or definitively, according to the financial ability of the person providing maintenance and the needs of the minor. The amount shall be related to the amount of the minimum living wage, and shall be increased automatically and proportionately in accordance with the statutory wage increases".

246. According to article 71 of the Code, "the right to request maintenance may be claimed, without distinction, by the father or the mother or by the person who represents the minor or is responsible for him". Unfortunately, the amounts customarily fixed for the maintenance of minors are insufficient to meet their real needs.

247. In the adoption process, article 195 of the Juvenile Code guarantees to "the minor who is able to form his own opinion, the right to freely express his opinion, which shall be duly taken into account. If the minor has reached the age of puberty, he must give his consent".

248. The following articles of the Code concern the provisions that must be applied in the case of offences committed by minors:

(a) Article 136: "During the investigation, every minor must be given a hearing and his opinion and version of events must be taken into account and given proper consideration in the decision handed down by the court, in accordance with the requirements laid down in article 38 ...";

(b) Article 149, second subparagraph: "If the minor has been the passive subject of an offence, the statements and version of events he gives during the investigation shall have the force of evidence at the criminal proceedings to which the abuse gives rise";

(c) Article 17 : "In all cases, whether or not there is an order for deprivation of liberty, the Juvenile Court must hold a private hearing at which only the minor will be heard in the first instance";

(d) Article 189, final subparagraph: "Minors shall have the right, during the period when they are subject to correctional measures, to read the relevant documents and object to the reports and opinions contained therein. To this end, the minor shall request the Juvenile Court to amend the said reports, so as to take into account his opinion and that of other professionals appointed for that purpose".

249. One of the functions of the Juvenile Court is to monitor the fulfilment of the above-mentioned provisions.

250. According to the data supplied by the Technical Secretariat of the Social Front at the end of 1995, 35 per cent of the population of Ecuador were living in a state of poverty and 17 per cent in a state of vulnerability. If

these percentages are added together, it emerges that over half the population of Ecuador are unable to meet their basic needs, while 59 per cent of persons in this group are under 18 years of age.

251. In order to improve the conditions for the development of minors, especially those at risk, the Ministry of Social Welfare has set up the "Child Rescue Organization" (ORI), which has led to the establishment of community children's homes, community children's centres and rural community centres, which provide services for mothers and children in the areas of psychological and social development, health, nutrition, early learning and leisure.

252. Among the most serious problems affecting Ecuadorian children are malnutrition and anaemia, especially because of lack of iron, and the National Fund for Child Nutrition (FUNIN) has been set up to combat such problems.

253. In addition, the main objectives of the Emergency Social Investment Fund (FISE) are to alleviate the difficult circumstances and improve the quality of life of people living in poverty, to identify as a matter of priority risk and emergency situations, and to seek appropriate alternatives for meeting the needs of such people.

254. With regard to education, the seventh subparagraph of article 40 of the Constitution stipulates: "The State guarantees access to education for all its inhabitants, without discrimination".

255. Public education is non-denominational and free of charge at all levels and private education is guaranteed. Education is compulsory from the pre-primary level up to the basic course of the intermediate level or equivalent. In the case of public education, social welfare services will be provided free of charge.

256. Juvenile employment is dealt with in articles 154 to 156 of the Juvenile Code, which are reproduced below:

> "Article 154. The State shall protect the minor against economic exploitation and against any work or working environment that may obstruct his education or prove harmful to his or her health or physical, mental, spiritual, moral or social development. The State shall support and coordinate public, private or community programmes aimed at achieving the objectives set out in the preceding paragraph. The juvenile courts shall ensure that the rights of the minor are fully respected, preventing exploitation of the minor or violation of his or her rights."
>
> "Article 155. The employment of children under 14 years of age is prohibited; however, the juvenile court may authorize work as apprentices by children under 12 years of age who have completed primary education. Work by minors in mines or rubbish dumps, work involving the handling of psychotropic or toxic objects or substances and night work are prohibited."

"Article 156. The parents, guardians, carers, employers or persons responsible for the working minor are strictly obliged to ensure that the minor attends an educational establishment and completes secondary education".

259. Unfortunately, the poverty and extreme poverty affecting large sections of the Ecuadorian population prevent the proper fulfilment of the above-mentioned provisions, since many children are obliged to start work before completing their primary education. Statistics show that about 800,000 children, who represent approximately 37.5 per cent of the population between 10 and 17 years of age, are sweet-sellers, flower-sellers, shoeblacks, singers on buses or beggars. Working girls are mainly in domestic service.

260. In order to overcome this problem, the National Social Development Plan for 1996-2005 contains policies on children, one aim of which is to eradicate work by minors under 12 years of age. To this end, a sustained campaign directed at families, teachers, employers and society in general will seek to denounce and prevent child labour through coordinated action by the Ministries of Labour and Education, municipalities and NGOs. Further aims are to make primary education available to all and to prevent children from working by providing fair allowances based on the means-testing of their families.

Paragraph 2

261. Ecuador complies with the provisions contained in article 24, paragraph 2, of the Covenant by applying the following provisions:

(a) Article 35 of the Constitution states that: "When a birth is registered, no statement has to be made with regard to the type of filiation; and, when the identity document is issued, no reference shall be made to the type of filiation or to the fact that the child is adopted". Thus Ecuador seeks to avoid any kind of discrimination on grounds of family, social, economic, ethnic or religious conditions or any other condition of the children, their parents, family members or representatives, in accordance with the provisions of article 2 of the Juvenile Code;

(b) The last subparagraph of article 78 of the Civil Registration, Identification and Documentation Act states: "The surnames shall be the first surname of each parent, and the father's should precede the mother's";

(c) In Title VI of the Civil Code, "Children Conceived in Wedlock", article 240 states: "A child born more than 180 days after the marriage is considered to have been conceived in wedlock and the husband is considered to be the father". Article 259 stipulates: "If, because the mother has remarried, there is doubt as to which of the two marriages a child originates from and a judicial decision is requested, the judge shall decide, taking the circumstances into account and hearing medical evidence if he deems fit". Article 260 states: "It is also presumed that a child born within wedlock has the husband of his mother as his father, even if the 180 days referred to in article 240 have not elapsed. The husband may appeal against the presumption of paternity if he proves that it was physically impossible for him to have access to the mother during the entire period when conception could be presumed to have occurred according to the legal rules. But even without such

proof he may appeal against the paternity of the child if he was not aware of the pregnancy at the time of marriage or if he has not taken any positive steps to acknowledge the child after birth";

(d) In Title VII, "Voluntary Acknowledgement of Children", article 261 states: "Children born out of wedlock may be acknowledged by their parents or by one of them, and in this case they shall enjoy the rights laid down by law concerning the father or mother who has acknowledged them. Children who are still in the mother's womb may also be acknowledged".

250. In order to ensure that the above rules are fully applied and to guarantee compliance with one of the fundamental principles of the Convention on the Rights of the Child adopted by the United Nations General Assembly on 20 November 1989, namely, that every child shall have the right from birth to a name and a nationality, the State, through the National Institute for the Child and Family (INNFA), has undertaken a large-scale programme to ensure the registration of newborn infants and unregistered minors. The registration campaign took place from August to November 1995, and led to the registration of 112,179 children*.

Paragraph 2

251. Under the Constitution, Ecuadorian nationality is determined by the place of birth (ius soli) and the nationality of the parents (ius sanguinis).

252. Title II of the Constitution concerning nationality provides as follows:

(a) Article 50: "Persons become Ecuadorian by birth or by naturalization";

(b) Article 51: "The following are Ecuadorian by birth: (1) a person born on Ecuadorian territory; and (2) a person born on foreign territory: (a) of a father or mother who is Ecuadorian by birth and was in the service of Ecuador or an international organization or temporarily absent from the country for any reason, unless the person expressed a wish to the contrary; (b) of a father or mother who is Ecuadorian by birth, if that person becomes domiciled in Ecuador and expresses the wish to become Ecuadorian; (c) of a father or mother who is Ecuadorian by birth, if that person expresses the wish to become Ecuadorian between 18 and 21 years of age, despite residing on foreign territory";

(c) Article 7: "The following are Ecuadorian by naturalization: (1) a person who has acquired Ecuadorian nationality by rendering services to the country; (2) a person who has acquired naturalization papers; (3) a person who has been adopted as a child by an Ecuadorian while a minor. On reaching majority he or she shall retain Ecuadorian nationality unless expressing a wish to the contrary; and (4) a person who was born abroad of foreign parents, and who was naturalized in Ecuador while a minor, will on reaching the age of 18 years retain Ecuadorian nationality unless expressly renouncing it".

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* Source: Department of Voluntary Work, INNFA, Quito, 1996.

Article 25

263. The political rights of Ecuadorians have been recognized ever since the foundation of the Republic. They are fully guaranteed in the articles of the Constitution quoted below:

(a) Article 51: "Ecuadorian citizens have the right to elect and to be elected; to submit draft laws to the National Congress; to be consulted in cases provided for in the Constitution; to supervise acts by the public authorities; and to hold public office or employment, under the conditions laid down by law";

(b) Article 52: "Suffrage is universal, equal, direct and secret, compulsory for those who can read and write and optional for illiterates. All Ecuadorians who have reached the age of 18 and who are in possession of their civic rights are entitled to vote";

(c) Article 53: "The proportional representation of minorities is guaranteed in multi-seat elections, in accordance with the law".

264. In accordance with the Constitution, article 5 of the Elections Act states that: "the electorate comprises every Ecuadorian, male or female, who has reached the age of 18 years, is in possession of his or her civic rights and meets the requirements laid down by this Act ...". Article 6 specifies the rights of voters as follows: "to elect the persons who are to perform the functions of public office; to be elected and to perform the various tasks that those functions involve; to vote in plebiscites and referendums".

265. The only restrictions on the right to vote concern members of the armed forces and the police on active service and persons who, in accordance with the law, are not in possession of their civic rights.

266. The information submitted to the Committee in the third periodic report concerning the independence of the Elections Service and the responsibilities of the Supreme Electoral Court, the provincial electoral courts and the polling boards continues to apply.

Political parties

267. Article 54 of the Constitution recognizes the right to found political parties and participate in them under the conditions laid down by law, and states that "political parties shall enjoy the protection of the State for their organization and funding". Article 55 states that political parties recognized by law are authorized to submit or support candidates for posts subject to election by the public, and its second subparagraph states that candidates who are not members of or supported by political parties, in other words independent candidates, may stand as candidates.

268. Under the Political Parties Act, the requirements that a party must meet in order to be recognized and registered include: advocating doctrinal principles by which it may be identified; submitting a political action programme in keeping with the democratic system; having a nationwide organization; and having the number of members specified by law.

269. The second subparagraph of article 56 of the Constitution stipulates that, in order to continue to be registered, political parties must have "a level of representativeness that is expressed electorally in accordance with the law". This refers to the requirement to participate with its own candidates in multi-seat elections in at least half plus one of Ecuador's provinces.

Right to be consulted in the cases provided for in the Constitution

270. Article 51 sets out the right of citizens to be consulted and article 67 establishes consultation of the people by the President of the Republic as the mechanism for determining the wishes of the people on matters that, in his judgement, are of vital importance for the State. This procedure enables Ecuadorians to express their views freely and the decisions adopted by means of this process are binding.

271. Referendums were held in 1994 and 1995 in order to approve reforms to the Constitution. In the first, held on 28 August 1994, the President of the Republic asked the following questions:

(a) Should Congress, within 120 days of the dispatch of draft constitutional reforms by the President of the Republic, consider them, approve them in full or in part, or reject them and, if this is not done within the stated period, should the draft reforms be considered as rejected so that the President can submit them for referendum?

(b) Should independent citizens have the right to participate as candidates in any election by the public?

(c) Should the legislature manage the funds of the State budget?

(d) Should the legislature approve the State Budget?

(e) Should it be possible to stand for re-election to all posts subject to election by the public, including those of the President and deputies?

(f) Should legislators be elected: in the first round of voting, in the second round of voting?

(g) Should it be possible under the Constitution to acquire a second nationality without losing Ecuadorian nationality?

272. The referendum was held on the stated date and the decision of the people was in the affirmative for questions (a), (b), (d), (f) and (g) and in the negative for questions (c) and (e).

273. In the referendum held on 26 November 1995, the questions concerned the following matters:

(a) Administrative and financial decentralization of the education, health, housing, highways and environmental sanitation sectors;

(b) Right to free choice of a social security system, namely between a public or private undertaking;

(c) Equitable distribution of resources among provinces;

(d) Prohibition by law, even in the event of a strike, of paralysing or suspending the public services: health, education, transport, drinking water supply, electricity supply, fuel and telecommunications;

(e) Constitutional authority of the President of the Republic to dissolve the National Congress, once only, during his term of office.

(f) Election of district deputies, to single-member seats for a term of office of four years;

(g) Election of the President and Vice-President of Congress by the deputies by secret ballot, for a term of office of two years;

(h) Whether, if the first seven questions in the referendum are approved, Congress should convert them into a law of the Republic within 90 days;

(i) Ways to achieve the independence, autonomy, stability and efficiency of the judiciary. Do citizens agree or not agree with:

(i) The organization of the National Council of the Judiciary;

(ii) The establishment by the judiciary of a system of arbitration and other alternative methods of settling disputes;

(iii) Free trials in criminal cases and cases concerning employment, maintenance and minors;

(j) Termination of privileges in the public sector;

(k) Organization of the Constitutional Court.

274. The decision of the people was resoundingly negative, but in spite of this Congress has continued its work on the organization of the Constitutional Court and is proceeding with the study of the law that will govern the National Council of the Judiciary.

Right to submit draft laws to the National Congress

275. Article 51 of the Constitution guarantees the right to submit draft laws to the National Congress. This power is exercised by the political parties and class organizations through their representatives in the legislature and, occasionally, by individual citizens.

Right to supervise acts by the public authorities

276. This right, which is established in article 51 of the Constitution, is exercised by Congress by means of impeachment proceedings against office-holders, ministers and other officials specified by law. The proceedings may lead to acquittal or censure. In the latter case, the official is dismissed from office, banned from holding public office for one year and the accusations may lead to criminal proceedings.

277. The Office of the Controller-General of the State is responsible for monitoring income, expenditure and the investment of public resources and funds, and for issuing regulations for the performance of monitoring and the provision of advice in the areas for which it is responsible.

Right to hold public office or employment

278. Article 51 of the Constitution stipulates that any suitable citizen may be elected or appointed to a public office or post.

Article 26

279. As stated in this report in connection with article 2, the principle of equality before the law is embodied in article 22 of the Constitution, which reads as follows: "Without prejudice to other rights necessary for the full moral and material development deriving from the nature of the individual, the State guarantees ... (9). Equality before the law. Any discrimination based on race, colour, sex, religion, political or any other affiliation, social origin, economic situation or birth is prohibited."

280. Furthermore, article 20 of the Constitution guarantees to all individuals, whether men or women, subject to the jurisdiction of the State, "the free and effective exercise and enjoyment of the civil, political, economic, social and cultural rights set forth in the declarations, covenants, conventions and other international instruments in force".

281. Ecuador has made substantial progress in the effective application of the principle of non-discrimination, as has been described in connection with article 3 of the Covenant, referring to the obligation of the State to ensure the equal rights of men and women; in connection with article 14 concerning the equality of persons before the courts and tribunals; article 20, which prohibits any advocacy of national, racial or religious hatred that constitutes incitement to discrimination; article 23 concerning steps to ensure equality of rights and responsibilities of spouses during marriage; and article 25 concerning the participation of all citizens in public life.

282. The third periodic report submitted to the Committee showed in detail that Ecuadorian legislation fully recognizes the principles of non-discrimination and equality before the law in the fields of politics, economics, labour, education, taxation and social security and this continues to be the case. The Committee was also informed of the constraints which arise in practice on the full implementation of the laws on these matters and which largely persist on account of the problems inherent in the country's development.

Article 27

283. The Ecuadorian Government gives priority to the preservation and strengthening of the cultural heritage of its ethnic groups and to the fight against discrimination and the destruction of their cultural identity and their individuality as indigenous peoples.

284. The constitutional reforms of 1996 made reference for the first time to the aspiration of the indigenous peoples for Ecuador to be described as a "sovereign, democratic, unitary, decentralized, multicultural and multi-ethnic" State. This provision appears in article 1 of the Constitution.

285. The objective of the Confederation of Indigenous Nationalities of Ecuador (CONAIE) is to secure an amendment to the Constitution recognizing Ecuador as a multinational State. National consensus has not yet been reached on this issue.

286. Article 27 of the Constitution states that: "In the educational activities carried out in areas with a predominantly indigenous population, Quichua or the language of the respective culture shall be used as the principal language of instruction; and Spanish as the language of intercultural relations".

287. The National Directorate for Bilingual Intercultural Education was established in 1993. It specializes in aboriginal cultures and languages and was set up to provide bilingual teaching (Quichua and Spanish) in the indigenous communities of the highlands. In other areas, such as the Amazonian region, bilingual education is still in the early stages of development. The Government has expressed its commitment to meeting the educational needs of marginal groups, including the indigenous communities, paying due respect to their cultural identity.

288. The indigenous peoples of Ecuador speak at least 21 different languages. At least nine of these languages are each used by over 10,000 people, the most widespread being Quichua. In the east of the country each of the seven main aboriginal peoples has its own language. The Constitution recognizes that these languages form part of the national culture of Ecuador. Article 27 stipulates that in the areas where the population is predominantly indigenous Quichua and other indigenous languages are to be used in intercultural relations.

289. Although the available figures vary widely, the indigenous population accounts for between 25 per cent and 40 per cent of the inhabitants of Ecuador and is located in the coastal region of the north, in the highlands and in the east.

290. Afro-Ecuadorians make up 5 to 10 per cent of the country's population. They are concentrated in the provinces of Esmeraldas and Guayas, but there are also various groups in the highlands, in the areas of Carchi, the Mira river basin, Imbabura and more recently Quito.

291. In recent decades the indigenous peoples of Ecuador have redefined their relationship with governmental structures and with the rest of the population.

They have created a network of organizations throughout the country which have acquired a growing and significant influence on national life and represent a mechanism for political mediation.

292. Under the reforms allowing independent candidates to seek election, the indigenous organizations participated in a coordinated manner in local and national politics in the 1996 elections. The indigenous and other groups including the trade unions, united to form a political movement known as Pachakutik which won a considerable number of seats at the local level and in the 82-member National Congress, and the President of CONAIE, Mr. Luis Macas was elected as one of the 12 national deputies. Despite this progress, however, it should be pointed out that there are few indigenous Ecuadorians holding decision-making posts in the executive and judiciary or in the private sector. Indigenous Ecuadorians are mainly engaged in farming, the craft industries and trade. Their economy has been affected by the activities of middlemen on account of difficulties in increasing their involvement in the commercial sector.

293. As stated above, article 8 of the Constitution stipulates that the Ecuadorian State condemns all forms of racial discrimination or segregation. The Penal Code reaffirms that racist organizations and activities are illegal and lays down the penalties for persons who commit such offences.

294. Ecuador is a party to a number of international conventions that guarantee specific forms of protection for racial and ethnic groups and, as stated in the above-mentioned article, recognizes the right of the ethnic groups to the protection of "all those characteristics that are necessary for the preservation of their cultural identity".

295. The above-mentioned aspects are incorporated in the government policies for the indigenous peoples contained in the National Development Plan. These policies include: taking all measures to prevent the exclusion of the indigenous peoples from the current economic system and promoting their integration into the market economy in a creative manner; harnessing the productive potential of the ethnic groups by using their forms of organization and promoting the appropriate management of natural resources; and establishing credit lines and training programmes designed to strengthen micro-businesses or community businesses among the indigenous population.

296. The policies for the ethnic groups are based on an awareness of their importance for the rural economy and hence for the country. They seek to raise the status of the productive activities and cultural practices of the ethnic groups and the political proposals of the indigenous organizations, giving priority to the most acute problems affecting these groups.